

# KIRKOSWALD PARISH COUNCIL

Parish Clerk: Nick Phillips, 14 Twickenham Court, Carlisle CA1 3TW Tel: 0750 800 1602

Email: KirkoswaldParishCouncil@Hotmail.co.uk Website kirkoswaldparishcouncil.co.uk

Friday, 1 September 2023

Dear Councillor

You are summoned to attend the **PARISH COUNCIL MEETING** that will be held at Renwick Reading Room on **Tuesday 12 September 2023** at 7.30 PM. The Public and Press are invited to attend.



Clerk

## AGENDA

### 52. APOLOGIES FOR ABSENCE

To receive apologies and approve reasons for absence

### 53. MINUTES OF THE COUNCIL MEETING held on Tuesday 11 July 2023

To authorise the chair to sign, as a correct record, the minutes of the meeting held on Tuesday 11 July 2023 (attached).

### 54. DECLARATIONS OF INTEREST/REQUESTS FOR DISPENSATION

- a. Register of Interests: Councillors are reminded of the need to update their register of interests
- b. To declare any personal interests in items on the agenda and their nature
- c. To declare any prejudicial interests in items on the agenda and their nature (Councillors with prejudicial interests must leave the meeting for the relevant items)
- d. To make any requests for dispensation

### 55. Exclusion of Press and Public (Public Bodies Admission to Meetings Act 1960)

To decide whether there are any items of business which require exclusion of the press and public

### 56. PUBLIC PARTICIPATION

**PUBLIC PARTICIPATION (20 MINUTES ALLOWED)** - this agenda item enables Parish Councillors to hear the views, comments and/or complaints from the public. The Parish Councillors can respond. However (unless the items are already on the agenda) no council decisions can be taken at this meeting but, if appropriate, the matters can be put onto a future agenda for decision. Comments limited to 5 minutes per person.

### 57. WESTMORLAND AND FURNESS COUNCILLOR REPORTS– to receive items for information (items raised for decision will appear on the agenda for the next meeting subject to agreement by the council.)

### 58. POLICE MATTERS – to resolve

whether to submit any matters to the Local Focus Hub.

## KIRKOSWALD PARISH COUNCIL

Parish Clerk: Nick Phillips, 14 Twickenham Court, Carlisle CA1 3TW Tel: 0750 800 1602

Email: KirkoswaldParishCouncil@Hotmail.co.uk Website kirkoswaldparishcouncil.co.uk

59. **PLANNING APPLICATIONS** - You may view the details on the Planning Authority website ([Westmorlandandfurness.gov.uk](http://Westmorlandandfurness.gov.uk)) where parishioners can submit their own observations directly

a. To resolve whether to submit any observations on the following applications

22/0086	Scales Hall. Renwick Penrith	Change of use of agricultural buildings to create three dwellings with associated operations
---------	---------------------------------	--

b. To note the following applications that were delegated to the planning committee for decision and the comments below made online.

23/0506	THE BARN MIDLAND HOUSE	Removal of condition 3 (holiday occupancy restriction), attached to approval 20/0044	No objections
23/0481 and 0482	High College, Kirkoswald. Penrith	Addition of solar panels to roof and associated works	No objections
23/0532	FETHERSTON ARMS	Reduce 1no Poplar by 0.5m and 1no Poplar by 2m	No objections
23/0542	Cannerheugh Renwick	Proposed change of use of ground floor level of barn to form meeting, staff and boot rooms	No objections

c. To Note the following applications were granted approval

23/0146	3 THE SQUARE KIRKOSWALD PENRITH CA10 1DF	Listed Building Consent for replacement double glazed timber sash and casement windows and timber doors
22/0578	DAVYGILL CROGLIN CARLISLE CA4 9SJ	New access off the B6413 to fields for agricultural use.
23/0481 and 0482	High College, Kirkoswald. Penrith	Addition of solar panels to roof and associated works

## 60. FINANCE

a. **Payments- to authorise** schedule of payments totalling £468.92 (VN 30-36)

**NB VN30 paid as overdue**

VN	Inv. Date	PAYEE	CHQ. NO/ Ref no	Purpose of Expenditure	AMOUNT £	VAT INCLUDED £	NET AMOUNT £
30	20/07/2023	Kate Beaty	KOPC Audit	Annual Audit	100.00	0.00	100.00
31	21/07/2023	HSBC		Bank Charges	5.00	0.00	5.00
32	21/08/2023	HSBC		Bank Charges	5.00	0.00	5.00
34	13/09/2023	Nick Phillips	Salary	Salary	314.88	0.00	314.88
35	13/09/2023	HMRC	PAYE	HMRC - tax	4.40	0.00	4.40
33	13/09/2023	Peter Morgan	From KOPC	Paint	13.00	0.00	13.00
36	13/09/2023	Nick Phillips	Expenses	Clerk's Expenses	24.39	0.00	24.39

## KIRKOSWALD PARISH COUNCIL

Parish Clerk: Nick Phillips, 14 Twickenham Court, Carlisle CA1 3TW Tel: 0750 800 1602

Email: KirkoswaldParishCouncil@Hotmail.co.uk Website kirkoswaldparishcouncil.co.uk

36	13/09/2023	Nick Phillips	Expenses	Clerk's Expenses	2.25	0.00	2.25
----	------------	---------------	----------	------------------	------	------	------

- b. **Monthly reconciliation (July and August 2023) – to receive and note** the reconciliation and balances checked by Cllr Smith,.
- c. **Monthly budget update- to receive and note**
- d. **Receipt – to note** the following receipts

VN	Date	From	CHQ. NO/ Ref no	Purpose of income	AMOUNT £	VAT INCLUDED £	NET AMOUNT £
7	11/07/2023	Ian Johnson	0	DIG Grant	50.00	0.00	50.00
8	13/07/2023	H A Reynolds	0	DIG Grant	50.00	0.00	50.00
9	15/07/2023	Laces of Kirkoswald	0	Rental	25.00	0.00	25.00
10	16/07/2023	B Clark	0	DIG Grant	50.00	0.00	50.00

- 61. **HIGHWAY MATTERS:** To receive, for information, any items relating to the highway and **Resolve** which to ask the Clerk to report to the Highways Authority.
- 62. Footway Lights – To discuss and resolve what actions, if any, to take as a result of the information received re lighting.
- 63. Clerk's appraisal – To resolve whether to adopt the staff appraisal policy (attached) and appoint appraisers.
- 64. The Pound in Renwick- To discuss the proposal from the Clerk and agree next steps.
- 65. Footpath from Parkhead to Renwick – to discuss what actions can be taken and resolve what actions councillors would like to take.
- 66. Winter gritting – to discuss and resolve what actions can be taken.
- 67. **Councillors' reports and items for future agenda**  
Each Councillor is requested to use this opportunity to report minor matters of information not included elsewhere on the agenda and to raise items for future agendas. Councillors are respectfully reminded that this is not an opportunity for debate or decision making.
- 68. **Date of next meeting**  
**The next meeting of the Parish Council** will take place on Tuesday 10th October 2023 in Kirkoswald Church Institute at 7.30pm.  
Agenda items to be submitted to the Clerk by 12 noon on Friday 29 September 2023.

# KIRKOSWALD PARISH COUNCIL

Parish Clerk: Nick Phillips, 14 Twickenham Court, Carlisle CA1 3TW Tel: 0750 800 1602

Email: KirkoswaldParishCouncil@Hotmail.co.uk Website kirkoswaldparishcouncil.co.uk

## Minutes of the Kirkoswald Parish Council Meeting held on Tuesday 11 July 2023 in Kirkoswald Church Institute at 7.30 PM

**Present** Cllr J Little (Chair), Cllr J Haugh, Cllr A Jackson, Cllr N Jackson, Cllr H Kent, Cllr S Quinn, Cllr R Raine, Cllr W Smith, Cllr J Tea

**Also Present:** N Phillips Clerk/RFO, Westmorland and Furness Cllr Hanley and one member of the public

### 36. APOLOGIES FOR ABSENCE

received apologies and approved reasons for absence from Cllr Morgan, Westmorland and Furness Cllr Robinson

### 37. MINUTES OF THE COUNCIL MEETING held on 13 June 2023

authorised the chair to sign, as a correct record, the minutes of the meeting held on 13 June 2023.

a. **Matters arising:** Woodland investigations ongoing

### 38. DECLARATIONS OF INTEREST/REQUESTS FOR DISPENSATION

None received

### 39. Exclusion of Press and Public (Public Bodies Admission to Meetings Act 1960)

There were no items that required press and public to be excluded

### 40. PUBLIC PARTICIPATION – one member of the public in attendance to ask about parking

### 41. WESTMORLAND AND FURNESS COUNCILLOR REPORTS– received the following items for information

– Locality board information received. Place Action Groups to replace local planning groups. Cabinet are looking at 20mh limits in Westmorland and Furness council area with more details to follow.

### 42. POLICE MATTERS – resolved to submit issues with parking in Kirkoswald and ask that Police enforcement on a regular basis particularly on pavements, corners etc.

### 43. Church Institute – Nothing to report

### 44. FINANCE

a. **Payments- authorised** schedule of payments totalling £1254.84 (VN 22-29)

VN	Inv. Date	PAYEE	CHQ. NO/ Ref no	Purpose of Expenditure	AMOUNT £	VAT INCLUDED £	NET AMOUNT £
22	11/07/2023	Nick Phillips	0	Salary	314.88	0	314.88
23	11/07/2023	HMRC	0	HMRC - tax	4.4	0	4.4
24	11/07/2023	Nick Phillips	0	Clerk's Expenses	24.39	0	24.39
24	11/07/2023	Nick Phillips	0	Clerk's Expenses	1.85	0	1.85
25	12/07/2023	Hayton Parish Council	0	Clerk's Expenses	14.04	0	14.04
26	12/07/2023	Starboard Systems Limited (Scribe)	0	Subscription	276	55.2	331.2
26	12/07/2023	Starboard Systems Limited (Scribe)	0	Subscription	89	17.8	106.8
28	09/08/2023	HMRC	0	HMRC - tax	4.4	0	4.4
27	09/08/2023	Hayton Parish Council	0	Salary	314.88	0	314.88
29	3/7/2023	Rocket Sites Ltd	2527	Web Hosting	115.00	23.00	138.00

b. **Monthly reconciliation (June 2023) –**

**received and noted** the reconciliation and balances checked by Cllr Smith,

c. **Monthly budget update- received and noted**

# KIRKOSWALD PARISH COUNCIL

Parish Clerk: Nick Phillips, 14 Twickenham Court, Carlisle CA1 3TW Tel: 0750 800 1602

Email: KirkoswaldParishCouncil@Hotmail.co.uk Website kirkoswaldparishcouncil.co.uk

d. **Receipt – note** receipt as detailed.

Kirkoswald Parish Council										
RECEIPTS LIST										
Voucher Code	Date	Minute	Bank	Receipt No	Description	Supplier	VAT Type	Net	VAT	Total
3 B4RN	13/06/2023		Charity		DIG Grant	Andrew Jackson	Z	100.00		100.00
4 B4RN	13/06/2023		Charity		DIG Grant	Carol Edmondson	Z	50.00		50.00
5 Parish Field	16/06/2023		Charity		Rent	Natural Leaders Limited	Z	360.00		360.00
<b>Total</b>								<b>510.00</b>		<b>510.00</b>

45. **HIGHWAY MATTERS:** Potholes on Renwick to Croglin and some on Ravenghyll, College Corner, Scale Hill to Scale Houses. Councillors to email clerk the What 3 words addresses. Cllr Tea met with officers from Highways there will be a forthcoming Teams meeting on 19<sup>th</sup> July if any others want to join. Resident from Parkhead would like access only for residents. Clerk to approach highways.
46. **B4RN funds-** received a list of projects that will be voted on by the community to be brought back at a future meeting.
47. **EV Charging Point-** resolved that the council would not like to investigate the installation of EV charging points outside the Church Institute at this point.
48. **VILLAGE LIGHTS** – Councillors were asked to report to the clerk the location of any defective footway lights.
49. **Noticeboards** – Chair to make contact and Cllr A Jackson to install.
50. **Councillors’ reports and items for future agenda**  
Footpath from Parkhead to Kirkoswald  
Winter gritting
51. **Date of next meeting**  
**The next meeting of the Parish Council** will take place on 12 September 2023 in Renwick Reading Room at 7.30 pm.  
Agenda items to be submitted to the Clerk by 12 noon on Friday 1<sup>st</sup> September 2023.  
Meeting closed at 20:35

**KIRKOSWALD PARISH COUNCIL MEETING SEPTEMBER 2023 – FINANCIAL OFFICER’S REPORT**

**ACCOUNTS FOR PAYMENT**

**I present for approval the following accounts for payment – Vouchers No.30 to 36 amounting to £468.92**

<b>VN</b>	<b>Inv. Date</b>	<b>PAYEE</b>	<b>CHQ. NO/ Ref no</b>	<b>Purpose of Expenditure</b>	<b>AMOUNT £</b>	<b>VAT INCLUDED £</b>	<b>NET AMOUNT £</b>
30	20/07/2023	Kate Beaty	KOPC Audit	Annual Audit	100.00	0.00	100.00
31	21/07/2023	HSBC		Bank Charges	5.00	0.00	5.00
32	21/08/2023	HSBC		Bank Charges	5.00	0.00	5.00
34	13/09/2023	Nick Phillips	Salary	Salary	314.88	0.00	314.88
35	13/09/2023	HMRC	PAYE	HMRC - tax	4.40	0.00	4.40
33	13/09/2023	Peter Morgan	From KOPC	Paint	13.00	0.00	13.00
36	13/09/2023	Nick Phillips	Expenses	Clerk’s Expenses	24.39	0.00	24.39
36	13/09/2023	Nick Phillips	Expenses	Clerk’s Expenses	2.25	0.00	2.25
Approved - Minute No.							<b>60a</b>
Chair signature							
Date							

**Kirkoswald Parish Council****40-36-10 90508217**

Charitable - Kirko parish cou

GBP **28,749.86**

GBP 28,749.86 available

## Pending payments

View all of your pending payments below.

Last updated on 03 Sep 2023 10:57 [Refresh](#)

Payment date	Payee name	Reference	Payment type	Amount	Action
13 Sep 2023	Nicholas phillips	Salary	Bill Payment	GBP 314.88	<a href="#">Details &gt;</a>
13 Sep 2023	Nicholas phillips	Expenses	Bill Payment	GBP 26.64	<a href="#">Details &gt;</a>
13 Sep 2023	Peter morgan	from kopc	Bill Payment	GBP 13.00	<a href="#">Details &gt;</a>
13 Sep 2023	Hmrc paye/nic cumb	475pq00171766	Bill Payment	GBP 4.40	<a href="#">Details &gt;</a>

[↑ Back to top](#)

© Copyright HSBC Group. All rights reserved. No endorsement or approval of any third parties or their advice, opinions, information, products or services is expressed or implied by any information on this Site or by any hyperlinks to or from any third party websites or pages. Your use of this website is subject to the terms and conditions governing it. Please read these terms and conditions before using the website.

## Your Statement

Mr Nicholas Phillips  
 Kirkoswald Parish Council  
 14 Twickenham Court  
 Carlisle  
 CA1 3TW



### Account Summary

Opening Balance	29,939.70
Payments In	175.00
Payments Out	1,040.56
Closing Balance	29,074.14

**1 July to 31 July 2023**

### International Bank Account Number

GB42HBUK40361090508217

### Branch Identifier Code

HBUKGB4148T

### Account Name

Kirkoswald Parish Council

### Sortcode

40-36-10

### Account Number Sheet Number

90508217 475

### Your Charitable Bank Account details

Date	Payment type and details	Paid out	Paid in	Balance
<b>30 Jun 23</b>	<b>BALANCE BROUGHT FORWARD</b>			<b>29,939.70</b>
11 Jul 23	CR IAN JOHNSON <b>R07</b> b4m		50.00	29,989.70
12 Jul 23	BP Nicholas Phillips <b>VN22</b> Salary July	314.88		
	BP HMRC PAYE/NIC CUMB <b>VN23</b> 475PQ00171766	4.40		
	BP Nicholas Phillips <b>VN24</b> Expenses July	26.24		
	BP Hayton PC <b>VN25</b> IN02	14.04		
	BP Starboard Systems <b>VN26</b> INV-4302	438.00		
	BP Rocket Sites Ltd <b>VN29</b> INV2527	138.00		29,054.14
13 Jul 23	CR REYNOLDS H A <b>R08</b> B4RN H REYNOLDS		50.00	29,104.14
15 Jul 23	BP LACE R H M/S <b>R09</b> R HOWARD LACE		25.00	29,129.14
16 Jul 23	BP CLARK B <b>R10</b> Ben Clark		50.00	29,179.14
20 Jul 23	BP AS & KM Beaty <b>VN30</b> KOPC Audit	100.00		29,079.14
21 Jul 23	DR TOTAL CHARGES <b>VN31</b> TO 29JUN2023	5.00		29,074.14
<b>31 Jul 23</b>	<b>BALANCE CARRIED FORWARD</b>			<b>29,074.14</b>





## Your Statement

Mr Nicholas Phillips  
Kirkoswald Parish Council  
14 Twickenham Court  
Carlisle  
CA1 3TW



### Account Summary

Opening Balance	29,074.14
Payments In	0.00
Payments Out	324.28
Closing Balance	28,749.86

1 August to 31 August 2023

### International Bank Account Number

GB42HBUK40361090508217

### Branch Identifier Code

HBUKGB4148T

### Account Name

Kirkoswald Parish Council

### Sortcode

40-36-10

### Account Number Sheet Number

90508217 477

### Your Charitable Bank Account details

Date	Payment type and details	Paid out	Paid in	Balance
31 Jul 23	<b>BALANCE BROUGHT FORWARD</b>			<b>29,074.14</b>
08 Aug 23	BP Nicholas Phillips <b>VN27</b> Salary August	314.88		28,759.26
16 Aug 23	BP HMRC PAYE/NIC CUMB <b>VN28</b> 475PQ00171766	4.40		28,754.86
21 Aug 23	DR TOTAL CHARGES <b>VN32</b> TO 30JUL2023	5.00		28,749.86
31 Aug 23	<b>BALANCE CARRIED FORWARD</b>			<b>28,749.86</b>

### Information about the Financial Services Compensation Scheme

Most deposits made by HSBC Business customers are eligible for protection under the Financial Services Compensation Scheme (FSCS). For further information about the compensation provided by the FSCS, refer to the FSCS website at [fscs.org.uk](http://fscs.org.uk), call into your nearest branch or call your telephone banking service. Further details can be found on the FSCS Information Sheet and Exclusions List which is available on our website ([hsbc.co.uk/fscs/](http://hsbc.co.uk/fscs/)).

Credit Interest Rates	balance	AER variable	Debit Interest Rates	balance	EAR variable
Credit interest is not applied			Debit interest		21.34%



## Monthly breakdown of Receipts and Payments

All Cost Centres and Codes (Between 01/04/2023 and 31/03/2024)

## PAYMENTS

	Budget	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total	Variance
<b>Admin</b>															
Payroll	208.60	174.00												174.00	34.60
Audit					100.00									100.00	-100.00
Travel	250.00	49.27	24.39	62.83	24.39		24.39							185.27	64.73
Expenses	110.00				15.89		2.25							18.14	91.86
Working from Home	240.00														240.00
Subscriptions	500.00			240.64	480.00									720.64	-220.64
Room rental															
Bank Charges	60.00	7.80	8.60	5.00	5.00	5.00								31.40	28.60
Event Expenditure	250.00														250.00
<b>Grants</b>															
KO PCC	1,000.00		1,000.00											1,000.00	
Renwick Reading room	500.00		500.00											500.00	
Fellrunner Village Bus	311.00		311.00											311.00	
Lazonby Pool	500.00		500.00											500.00	
Renwick Church	900.00		900.00											900.00	
Great North Air Ambular	250.00		250.00											250.00	
<b>Income</b>															
Precept															
Parish Field															
The Pound															
Bank interest															
Laces															
<b>Miscellaneous</b>															
Wayleaves															
B4RN															
Miscellaneous	60.00	25.00												25.00	35.00
<b>Repairs and Maintenan</b>															
Repairs and maintenanc	1,800.00		1,800.00				13.00							1,813.00	-13.00

From:  
Subject:  
Date:  
To:

CK

Dear all

I had a long and informative chat last weeks with Amanda Ward at WaF council regarding footway lighting.

Highway authorities are required to provide street lighting but not footway lighting.

Many of you will recall that there was an opportunity for Parish Councils to take over the ownership and running of the footway lights (this was before my time as clerk and so long standing councillors may remember. KO made the decision not to take ownership. It turns out that a later decision was made by Eden District Council along with Electricity North West that they could not continue to maintain and or repair the footway lights that had not been adopted by parishes. They therefore made the decision that when a light head stopped working then that was the end of that light. They also decided that it was in the public interest that the light pole be left in place in case a future administration (WaF) perhaps or Eden at the time with a new administration made a decision to reverse this decision. It is cheaper to leave the pole than to remove it and certainly cheaper than to replace it. Therefore there are light poles in the area that have redundant heads that could be fitted with new LED heads. However, WaF have no plans to do this.

Any light heads that were fixed to buildings will no longer be serviced in any way.

The short term options that were explained to me are that KOPC could make a decision to replace the defective heads with new LED heads but would be liable for the cost of doing so and the longer term cost of the electrical supply. Replacing a head unit costs about £400. Lights on buildings, eg the school in KO, the PC could come to an arrangement whereby a more residential type light is fitted and a contribution made towards the electricity.

I also asked what the situation was in the legacy Barrow and South Lakeland areas and whether footway lighting there was funded or not. My question was about a lack of equity. If Barrow has footway lights from WaF and KO doesn't then KO residents should be paying less or have the same access!

I would suggest that this becomes an item for the agenda at the meeting in September.

I have copied Mary Robinson and Michael Hanley in on this email in the hope that they will raise the potential lack of equity at WAF council level.

Nick

Nick Phillips  
Clerk to Kirkoswald Parish Council  
14 Twickenham Court  
Carlisle  
CA1 3TW

0750 800 1602

[www.kirkoswaldparishcouncil.co.uk](http://www.kirkoswaldparishcouncil.co.uk)

# **KIRKOSWALD PARISH COUNCIL**

**Parish Clerk: Nick Phillips, 14 Twickenham Court, Carlisle CA1 3TW Tel: 0750 800 1602**

**Email: KirkoswaldParishCouncil@Hotmail.co.uk Website kirkoswaldparishcouncil.co.uk**

## **STAFF APPRAISAL POLICY**

There should be annual staff appraisals with the following objectives:

- Assessment of past performance and the improvement of future performance
- Assessment of future potential
- Assessment of training and development needs.

Appraisals should be a light touch appraisal with an agenda that would compare performance with job description.

Appraisals should not introduce any new items that have not been previously discussed, eg disciplinary matters.

The Council will appoint two councillors to carry out the Clerk's annual appraisal in September each year. They will have the delegated authority to make decisions about any pay award including the authority to agree the annual cost of living increase.

The appraisal reports should be signed and agreed by both parties and filed in the staff files.

A report should be given to the Full Council stating that the appraisals have been carried out, along with any recommendations.

The appraisal form will also be used as the basis for probationary reviews. The appraisal form is at Appendix A.

# KIRKOSWALD PARISH COUNCIL

Parish Clerk: Nick Phillips, 14 Twickenham Court, Carlisle CA1 3TW Tel: 0750 800 1602

Email: KirkoswaldParishCouncil@Hotmail.co.uk Website kirkoswaldparishcouncil.co.uk

## Appraisal Form

Name of Employee	
Post Held	
Date of Appointment	
Date of Appraisal	
Salary Point	

Current Job
Job Purpose
Description of Duties
Targets

### Detailed assessment of performance of duties

- A. Well above the performance expected
- B. Consistently above the acceptable standard of the grade
- C. Generally achieves the acceptable standard of the grade. Meets all the requirements of the job
- D. Not quite up to an acceptable standard, shows some general weaknesses
- E. Consistently below the acceptable standard
- F. Performance well below the expected level

# KIRKOSWALD PARISH COUNCIL

Parish Clerk: Nick Phillips, 14 Twickenham Court, Carlisle CA1 3TW Tel: 0750 800 1602

Email: KirkoswaldParishCouncil@Hotmail.co.uk Website kirkoswaldparishcouncil.co.uk

Knowledge of Duties	A	B	C	D	E	F
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(Comments)						

Quality of work	A	B	C	D	E	F
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(Comments)						

Relations with others	A	B	C	D	E	F
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(Comments)						

Communication skills	A	B	C	D	E	F
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(Comments)						

Ability to work independently	A	B	C	D	E	F
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(Comments)						

Training and qualifications achieved in the last year						



# KIRKOSWALD PARISH COUNCIL

Parish Clerk: Nick Phillips, 14 Twickenham Court, Carlisle CA1 3TW Tel: 0750 800 1602

Email: KirkoswaldParishCouncil@Hotmail.co.uk Website kirkoswaldparishcouncil.co.uk

Appraisers' Comments
----------------------

Recommendation for Pay (Salary point, date of award)	
---	--

Future targets
----------------

Appraiser 1 signature	
Date	
Appraiser 2 signature	
Date	
Appraisee's signature	
Date	

# KIRKOSWALD PARISH COUNCIL

Parish Clerk: Nick Phillips, 14 Twickenham Court, Carlisle CA1 3TW Tel: 0750 800 1602

Email: KirkoswaldParishCouncil@Hotmail.co.uk Website kirkoswaldparishcouncil.co.uk

Having spoken to [REDACTED] about The Pound I am proposing that the council enters an agreement with him and his successors for a long term lease on the land. The attached NALC document sets out that the Parish Council should have the lease drawn up by someone who is professionally qualified to do so. There are costs involved in creating a legal agreement that may exceed the income costs.

The heads of terms, which are the basic details of the agreement, would be as follows

Lessor	Kirkoswald Parish Council
Lessee	[REDACTED]
Length of term	[REDACTED]
Payment	[REDACTED]
Conditions	No permanent structure is to be built or erected on The Pound The lessee agrees to maintain The Pound in its current form and is responsible for keeping all grounds in a good state of repair. The lessee is responsible for maintaining the boundaries in their current good condition where they are currently the responsibility of the lessor.

Advantages to the lessee – he and his successors have undisputed rights to use the land for the next 25 years with the option to re-negotiate a new term at any future point.

Advantages to the lessor – the potential liability for grounds care and boundaries is removed from the council. If the current leaseholder were to give up the use of the land the council would then be required to maintain the area including grass cutting and repairing walls and boundaries.

*July 2012*

## **LEASE NEGOTIATIONS**

### **Introduction**

- 1 Leases are complex legal contracts specific to the ownership, occupation and rights in and over land or premises on it. The purpose of this Note is to help local councils identify that there is a due process to follow before legally committing to leases, that main terms should not be agreed and leases should not be executed before professional advice is obtained.
  
- 2 In the case of a lease, the legal principle of caveat emptor (buyer beware), imposes an obligation on a tenant to find out about the premises and to make further enquiries **before** entering into a contract for the grant of a lease or the lease itself. This is important because the landlord is not required to disclose matters which the tenant has knowledge of or ought to have knowledge of (e.g. any physical defects in the premises). Before making a legal binding commitment to enter into a lease, councils are advised to inspect and make thorough enquiries of the premises in question and any adjoining premises to find out if it is suitable for their intended use(s) and if, in the future, they decide to assign or sublet it.
  
- 3 Notwithstanding the use of premises that may be permitted by a prospective landlord and later confirmed in the lease itself, a tenant may not be able to carry out any building or other operations or make a material change in the use of premises without obtaining planning permission. A tenant should be satisfied that planning permission is available for the use intended for the premises.
  
- 4 If a council inspects premises (and any adjoining premises) and is aware of any planning law restrictions at the outset, it will be better placed to assess any potential problems and communicate these concerns to its professional advisors. Despite the related costs, councils should not enter into leases unless they have first received

advice where appropriate from (i) a professionally qualified surveyor in respect of the physical condition of premises and the state of repair and its market value and (ii) a legal professional. Agreeing to the main terms of a lease or executing a lease without careful consideration and without taking professional legal advice can have disastrous consequences for a council. The expenditure incurred by councils in seeking professional advice before legally committing to leases may prevent the need to obtain more expensive legal advice occasioned by disputes during and at the expiry of the lease.

- 5 Local councils sometimes ask if there are template lease documents available to adapt as necessary for their own use. NALC does not provide any. It is not advisable for those who are not legally qualified to simply adapt templates or other leases because lease terms, some of which are standard and some of which are not, require an understanding of landlord and tenant law. Template leases, by their nature, cannot be specific to a particular premises or reflect the needs of the landlord and tenant in every situation.
  
- 6 The standard and relevant terms in a lease in respect of one particular type of premises (e.g. a village hall or community centre) are unlikely to be the same as the standard and relevant terms of a lease of other types of premises e.g. a playing field, council offices, a parking facility, or a sports facility. In addition, often councils overlook the importance of key terms which feature in all leases, such as the length of the term of the lease, break clauses, permitted use clauses, repairing and insuring obligations, and whether the tenant has security of tenure.
  
- 7 To summarise, local councils as prospective landlords or tenants are recommended to:-
  - inspect the premises (and any adjoining premises) they are interested in;
  - commission a professional survey;
  - consider the effect of any planning permissions regarding its permitted use in planning law terms;
  - seek professional legal advice and
  - understand the meaning and effect of lease terms.

## **Heads of terms and contracts for a disposition of land**

8. Whilst councils are advised to obtain professional advice before agreeing to terms and executing leases, it is possible for councils to handle some of the preliminary negotiations for a lease. Heads of terms (usually written) are used by parties to confirm the basic deal between the parties. They therefore save time and some expenditure incurred in the legal advice connected with the drafting and execution of a lease. The parties use heads of terms to agree and record important matters in principle, the overall scope of a proposed lease and any commercial and key practical matters. Some of these may not seem important at the time but may affect the tenant's ability to undertake or manage its activities and business at the premises.
9. It is important that the written heads of terms document should clearly state that it is not legally binding. If the heads of terms document does not include a relevant statement (such as 'subject to contract') to confirm the heads of terms are not binding, and the parties then sign to agree all the terms included, the heads of term may create a binding contract (i.e. if there is an offer, and acceptance, consideration and an intention to create legal relations). If the heads of terms confirm that it is 'subject to contract', this should be sufficient to prevent a contract from arising.
10. Even though heads of terms should not be legally binding, parties need to take care that the terms recorded therein are accurate. The terms are supposed to reflect important matters which parties have considered and already agreed in principle. It may be difficult for a party to renege on a point if it has been agreed and recorded in the heads of terms.
11. Subject to agreeing heads of terms, usually parties proceed directly to the lease. It is not essential for parties to enter into an agreement or a contract for the grant of a lease before they enter into the lease itself. Agreements for a lease may be necessary if the landlord is undertaking works at the premises, or if the tenant wants early occupation to commence fitting out a premises, or is applying for planning permission.
12. The main matters usually recorded in the heads of terms are highlighted in **bold italics** below. Some additional commentary has been given to highlight and explain related matters which may become problematic if such heads of terms and subsequently the

lease terms are not understood, agreed or well drafted. Such commentary is not exhaustive and are matters upon which a council's retained solicitors are qualified to further advise.

a) ***The correct names, identity and contact details of the landlord and tenant.***

This is especially important if one party is an unincorporated body. Each party should ensure that the other is the entity that it claims to be. In addition, the landlord and any superior landlord should be identified.

Contact details by post, phone, fax and email should be given, as well as a contact name and title (e.g. director, treasurer, Chairman, clerk). If a party is a company, a correspondence address (if this is different to the company's registered address) should be provided.

b) ***The premises address***

Councils should have good knowledge and understanding of the premises. Its boundaries together with floor area/measured space, all means of access, and areas shared with others/ common parts should be clearly identified and marked on a plan.

For a lease in respect of only part of a building, the lease should specify which parts of the premises are being demised. This also affects repairing obligations in the lease. Parties will need to consider walls, floors and ceilings, window frames and windows. For example, in the absence of a provision in the lease to the contrary, a demise of part of a building divided horizontally or vertically will usually include the external walls of the parts and any external fixture fixed to the walls. Also in the absence of a provision in the lease to the contrary, where a building is divided vertically, a demise of part will usually include the roof of that part.

The lease must accurately describe the exact extent of the demised premises and where appropriate refer to scaled plans. Too often plans are inaccurate and this can cause problems later such as repairing, boundary and access disputes. In addition, councils should be aware that the Land Registry requires accurate scale plans on all leases submitted for registration (i.e. any leases including assignments with a term of 7 years or more). If a tenant enters into a lease with an inaccurate plan, the tenant may need to pay the landlord's legal and surveyor's costs for approving a revised lease plan before its leasehold title can be registered. Chartered surveyors or expert

plan drawing consultancies may be employed, at modest cost, to produce an accurate plan before the lease is entered into.

**c) *Rent per annum***

The parties should agree when rent is payable e.g. monthly or quarterly.

The term 'rent' may have different meanings depending on its exact definition in the lease. It may or may not include service charge payments and insurance premiums. It may also mean not only the original rent but the revised rent payable pursuant to a rent review clause and any interim rent payable when a business tenancy governed by the Landlord and Tenant Act 1954 (the 1954 Act) continues after the expiry of its contractual term.

**d) *Any rent free periods or other incentives***

**e) *Type of lease***

This could be a head lease or a sub-lease. A tenant will be bound by restrictions in a superior leasehold or freehold title, even if the freehold title has not been deduced. A tenant should press for details of any superior title. Where a sub-lease is proposed, the proposed sub-tenant can require his landlord (also a tenant) to produce his lease (or sub-lease) and any assignment of it during the preceding 15 years, but will not be entitled to see the superior lease or freehold title.

As well as enquiries as to any head leases, enquiries should be made about any deeds or other agreements supplemental to the lease.

**f) *Landlord's initial works (including timing)***

Usually relevant if the parties are not proceeding direct to the lease.

**g) *Tenant's initial works (including timing)***

Usually relevant if the parties are not proceeding direct to the lease.

**h) *Guarantor (if any)***

**i) *Term of lease and commencement date***

Subject to where the tenant enjoys security of tenure to remain in possession of the premises and to renew the lease at the end of the contractual term, the term may be fixed (e.g. 25 years) or continued/held over after the expiry of the fixed term (e.g. for a term of 75 years and from year to year thereafter).

**j) *Options to break and extend or renew lease***

Break clauses permit a party to terminate the lease sometime before the expiry of the contractual term. The notice periods for break and renewal options should be specified.

The only reasonable pre-conditions to tenants exercising break clauses are that they have performed their covenants (e.g. paid rent and other payments due), give up occupation and leave no sub-leases. Disputes about the condition of the premises, what has to be left behind or removed, can be settled later as would be the case at the expiry of the original lease term.

**k) *Landlord and Tenant Act 1954***

It is desirable for a tenant of a business tenancy (which may include activity not necessarily a business or commercial activity carried on by a body of persons, whether corporate or not) to have the protections conferred by the 1954 Act. Leases protected by the 1954 Act do not always expressly state this.

Tenants of leases of a business premises, enjoy security of tenure. This means that the lease does not automatically expire at the end of the lease term and a periodic lease cannot be ended by the service of a notice to quit by the landlord. The tenant is entitled to remain in possession of the lease on the same terms as the current lease and either the landlord or the tenant can serve a notice on the other requesting a new lease and setting out the proposed terms. Tenants have a number of rights including a right to compensation if they have to vacate the premises in certain circumstances.

The 1954 Act excludes certain types of leases from protection. Leases excluded from protection include farm business tenancies (see Legal Topic Note 50) and fixed term tenancies for 6 months or less. Licences (see Legal Topic Note 48), are also excluded from the protection of the 1954 Act. Sometimes freeholders and leaseholders prefer



to enter into licences rather than leases because licences are not protected by the 1954 Act.

In some situations it is not appropriate for the tenant to have the protection of security of tenure afforded by the 1954 Act. In early negotiations and in the heads of terms, the landlord should confirm this.

If a landlord wants to contract out of a lease which would ordinarily be protected by the 1954 Act, he must serve a prescribed form on the tenant which warns the tenant that he is agreeing to a lease without security of tenure and which advises him to obtain professional advice. The tenant must then simply sign and return a prescribed form which contains a declaration accepting that the lease is excluded from the protection of the 1954 Act. In the case of any such agreement to exclude security of tenure, the declaration by the tenant must be made before the tenant enters into the lease or becomes contractually bound to do so.

The provisions of the 1954 Act are fully explained in Legal Topic Note 49.

### **1) *Rights***

This includes any rights (including any easements) relating to the premises which the tenant expects or needs in order to use the premises as he wishes. Usually this includes the right to use pipes (which when defined in a lease normally includes all pipes, sewers, drains, watercourses, wires, cables and other conducting media) in other parts of the premises, not being leased, in order to run services to and from the premises being leased. The landlord may reserve the right to use pipes passing through the tenant's premises. Other important rights include rights of access to and from the premises, use of common parts, remote storage areas, signage, shared amenities such as toilets and kitchens, parking facilities (confirmed by number and plan if relevant).

Local councils, as tenants, often overlook the need to confirm rights of access to the premises including those that extend to the public highway. If access ways are shared with others, then the cost of the shared maintenance needs to be agreed.

Landlords usually impose extensive exceptions and reservations of rights over the premises especially if he owns the adjoining premises. If the lease contains rights of

way that are granted over the landlord's title, it will be necessary for the tenant to register them in order to bind the landlord's successors in title.

#### **m) *Rent review timescales and method***

Ideally, a lease should permit both the landlord and the tenant to start the rent review process which may result in the rent being increased or decreased. If the landlord is not prepared to permit a downward rent review, the tenant may want to insist that the lease includes a break option exercisable by the tenant. The lease should not permit the landlord to simply change the rent as and when he likes. Usually, however a lease contains provisions which permit the landlord alone to change the rent.

The rules by which the rent may be changed should be clear and understandable. When rent reviews may occur and by whom they can be triggered should be clear.

The rent review clauses will set out many different matters. The basis of a rent review should be the market rent unless stated otherwise e.g. increases by a fixed amount. If rent increases are linked to a particular price index (e.g. Consumer Price Index) the index should be published by an independent authoritative source.

The rent review clauses in a lease may also stipulate a time-table for determining the new rent and procedural steps. Typically a landlord will be required to give notice of a proposed rent increase before a given date (the review date) and the tenant will be required to respond (giving a counter-notice) within a defined period after receipt of the landlord's proposal. If the parties do not agree the revised rent, the lease should contain provisions for settling any disagreement regarding any new rent. Disputes should be referred to an independent expert or arbitrator to settle, whereby the costs of the dispute or arbitration are shared by the parties.

Frequently, landlords and tenants fail to comply with the timescales set out in the lease and the courts have been asked to rule whether a failure to comply with the strict requirements of the lease invalidates the rent review provisions.

Many contracts (including leases) state that an act should be done at a time set out in the contract. In some cases it is essential that the act is done at the time specified in the contract and at no earlier or later time. Where an act must take place on the precise date (or time) specified in a contract, it is said that "time is of the essence."

It is open to the parties to a lease to stipulate that time is to be of the essence in respect of the giving of rent review notices but, in the absence of such a stipulation, it will be assumed that time is not of the essence. If time is not of the essence either party may take a step even though the time for doing so (as set out in the lease) has expired. This is the effect of the House of Lords decision in *United Scientific Holdings Ltd. V. Burnley Borough Council* [1978] AC 904.

It was originally thought that unreasonable delay on the part of a landlord might deprive him of the rent review provisions in the lease. In the *United* case Lord Salmon said:

*“... Any unreasonable delay caused by the landlord and which is to the tenant’s prejudice would prevent the rent being revised after the review date.”*

Unfortunately, however, later decisions have moved away from the view in the *United* case. When a landlord had delayed serving the rent review notice by nearly 4 years as were the facts in the case of *Amherst v James Walker Goldsmith and Silversmith Ltd (No.2)* [1983] 2 All ER 1067, the Court of Appeal said:

*“... There was no ground for reading into the lease an implied term that if the landlord did not serve a rent assessment notice within the time-limit set out in the review clause he had to do so within a reasonable time thereafter.... Even delay plus hardship to the tenant would not disentitle the landlord to his right to a review unless the combination amounted to an estoppel.”*

In their textbook “A Handbook of Rent Review” the authors (Kirk Reynolds QC and Guy Fetherstonhaugh QC) state at page 370:

*“... It must now be regarded as extremely doubtful whether, in the absence of circumstances giving rise to an estoppel, delay causing hardship or prejudice to the tenant will result in the right to review being lost or curtailed.”*

#### **n) Assigning, subletting and sharing**

Unless a lease contains restrictions, the tenant will be free to deal with his leasehold interest in any way he wants. He may assign (transfer by deed) his existing leasehold

interest in the whole premises, or grant a (new) sub-lease of the whole or part of the premises, or part with possession of a whole or part of the premises by licence. However it is common and reasonable for a landlord to impose some restrictions. The parties should aim for a fair balance between their competing interests.

For a landlord, close control over assignment is essential otherwise the premises may be occupied by an undesirable tenant, used for purposes not acceptable, and the value of the landlord's reversionary interest may be reduced. If the landlord owns adjoining premises, then for estate management purposes, he may want to exercise control over the premises by absolutely prohibiting assignment or restricting assignment without first obtaining his written consent not to be unreasonably withheld or delayed. A prohibition or restriction on an assignment does not mean that the lease cannot permit a sub-lease or a sharing of part of the premises by licence.

For a tenant, a lease may become a burden if he no longer has any use for the premises or is in financial difficulty and cannot, for example, afford the rent and repairing obligations. A lease should allow a tenant to assign the whole of the premises with the landlord's written consent not to be unreasonably withheld or delayed. Landlords sometimes require tenants to guarantee a lease once it has been assigned to a third party. This form of guarantee is known as an Authorised Guarantee Agreement (AGA). An AGA has the effect of making the original tenant responsible, as guarantor, for the performance of the lease obligations until his assignee assigns. If the landlord insists on an AGA, this should only be necessary if at the date of assignment, the proposed assignee together with any proposed guarantor is of lower financial standing.

If the lease permits sub-letting, it is common for landlords to require the sub-lease to be granted on similar terms as the tenant's lease. It is usual for landlords to impose lease terms which require any sub-leases to be excluded from the protection of the 1954 Act. The lease may further limit and restrict the sub-lease terms in so far as they relate to permitted use, rent and type of sub-tenant.

A restriction against the tenant granting a sub-lease will not prevent the tenant from granting a licence to others to use or share the premises. This may be desirable for tenants of premises such as a village hall, recreational field, sports facility.

If a tenant grants a sub-lease or shares, by grant of a licence, part or all of the premises with another, the sub-lease or licence should expire on a date before the

tenant's right to break the lease and should not grant any rights to occupy the premises after the term has expired.

**o) *Service charge provisions and any caps***

During negotiations for a lease, the landlord should provide a tenant an estimate (or actual budgets) for service charges, insurance payments and other outgoings that the tenant is obliged to pay under the lease. A landlord should also disclose to the tenant known irregular expenditure (e.g. improvements to common parts and shared facilities) which would have a significant effect on the amount of service charges payable by the tenant. If the landlord is not forthcoming with this information, the tenant should ask for it to be provided.

**p) *Repairing obligations***

Ideally, unless expressly stated otherwise in the heads of terms and lease, a tenant should only be obliged to give the premises back at the end of the lease in the same condition that the premises was in at the start of the lease.

A tenant's repairing obligations under a lease should be appropriate to the length of the lease and the condition of the premises as at the date the lease commenced. If a lease requires a tenant to pay service charges in addition to rent, the tenant will indirectly be responsible for the cost of repairs by the service charges levied on him.

Repairing obligations should only be agreed **after** a professional survey of the premises has been obtained. The repairing covenant imposed on a tenant in any lease is **fundamental**. It will either be a full repairing covenant or may be subject to a schedule of condition, ideally prepared by a professionally qualified surveyor prior to the grant of a lease.

If a tenant is subject to a full repairing covenant, he may, at the expiry or termination of the lease, be obliged to return the premises to the landlord in a better condition and state of repair than the premises was in at the commencement of the lease. With a schedule of condition, the idea is that the parties agree the condition of the property as at the commencement of the lease term and are aware of any major repairs which are required. The advantage of a lease having a schedule of condition is that, at the end of the lease, the tenant will not have return the premises back to the landlord in a better condition than it was in when he took the lease.

It is sometimes not realistic, for reasons of cost, to expect a tenant to commission a professional survey of a premises which confirms the condition of a premises before or when the lease term started. This will be more relevant in respect of a short term lease. If a survey is not possible, it is worth the tenant taking photographs which evidence the condition of the premises when the lease term commenced. The photographs should be dated and witnessed and kept with the lease.

Even with an agreed schedule of condition in place/ annexed to a lease, protracted and expensive disputes between the landlord and tenant as to the condition of the premises are sometimes inevitable.

#### **q) *Alterations***

In addition to specifying or limiting the use of the premises (permitted user clause) a landlord may also restrict any alterations the tenant wishes to make in order to meet its needs for the premises.

If a lease contains an absolute covenant against the making of any alterations or against the making of a particular type of alteration, the landlord will have total control over the tenant. This is undesirable for the tenant who may want to undertake alterations which would improve the premises for his use.

A landlord's control over alterations should not be more restrictive than is necessary to maintain the physical state, character and appearance and reputation of the premises, to maintain the rental value of the premises, and at the time of the proposed alteration, the value of the landlord's interest in the premises and in any adjoining premises belonging to the landlord.

It is common for a lease to require a landlord to give his written consent to proposed external or structural alterations (e.g. to install internal partition walls) or improvements which should not be unreasonably withheld or delayed. These provisions are important for a tenant to ensure he has sufficient flexibility to adapt or alter the premises to suit his needs or the needs of the business/ activity undertaken at the premises. The lease may stipulate that a tenant does not need the landlord's prior written consent for internal non structural alterations but require the tenant to notify him of the same.

In deciding whether an alteration by the tenant constitutes an improvement, the matter is to be viewed from the tenant's perspective. Provided that the alteration increased the value or usefulness of the premises from the tenant's point of view, it is irrelevant that the alterations will inevitably lead to a decrease on the value of the landlord's reversionary interest.

A lease may require the tenant to remove any permitted alterations and make good at the end of the lease, unless unreasonable to do so. A landlord should notify the tenant of such obligations at least 6 months before the termination date.

#### **r) *Permitted User clauses***

This confirms the permitted use for the premises. Examples of common permitted user clauses in local council leases include for 'sports and recreational purposes', 'a place for public meetings', and 'office space'. Other familiar permitted user clauses for local council leases include for the 'benefit of the community' or 'for recreational purposes'. Recreational purposes may or may not include sports. If a council regards the permitted user clause as ambiguous in meaning or believes that there is a risk that it may not permit them to use the premises in the way it proposes, then the user clause should be made clearer in meaning, reducing the risk of there being a future breach of this covenant.

A landlord may be prepared to broadly stipulate the type of use to be permitted at the premises. A very narrow permitted use would give a tenant no flexibility in how the premises is used. Although it may favour a tenant on rent review, the tenant's attempts to dispose of the premises at some time in the future by assignment or sub-lease to a party who wants to undertake different activities and business at the premises may be hampered.

Sometimes permitted use lease clauses are linked to a particular or similar use as is defined by the Town and Country Planning Use Classes Order 1987 (SI 1987/764) (as amended). The 1987 Order (as amended) removes the need to obtain planning permission where there is a change of use within specified uses as defined. For example, with reference to the schedule to the 1987 Order (as amended), class B1 use is office use other than an office for financial and professional services but a lease may qualify such office use for the business of a solicitor, accountant or architect.

### **s) Insurance**

If the landlord is insuring the premises, the insurance policy should be obtained from reputable insurers and its terms should be reasonable, fair and represent value for money. The tenant should ask for a copy of the policy before legally committing to the lease.

The lease should confirm that the landlord's policy is to be used to repair or rebuild/reinstate the premises unless the policy is invalidated by the tenant's deliberate acts.

If premises are damaged by an insured or uninsured risk, other than when caused by the tenant's deliberate acts, the lease should confirm that the rent will be suspended. If premises are damaged by an uninsured risk so as to prevent occupation, the tenant should be permitted to terminate the lease unless the landlord rebuilds the premises at his own cost.

The tenant is expected to arrange insurance cover in respect of all activities it undertakes at the premises e.g. public liability insurance.

13. A model heads of terms is available under the Code for Leasing Business Premises in England and Wales 2007 (the 2007 Code). The 2007 Code is endorsed by the Association of British Insurers, British Council for Offices, British Property Federation, British Retail Consortium, Confederation of British Industry, Communities and Local Government, CoreNet Global, the Forum of Private Business, Federation of Small Businesses, Investment Property Forum, The Law Society of England and Wales, the Royal Institution of Chartered Surveyors and the Welsh Assembly Government. Councils should note that the 2007 Code model heads of terms is copyrighted to the joint working group on Commercial Leases 2007 and cannot be used for commercial purposes.
14. The 2007 Code, model heads of term, guidance and information (such as an occupier's guide and a landlord guide) can be accessed via <http://www.leasingbusinesspremises.co.uk/index.html>. The guidance available on this website is very useful but is not to be regarded as a substitute for professional legal advice for a particular situation.



15. Although this Note is intended to help local councils understand and better engage in lease negotiations, it is no substitute for professional legal advice on a particular lease.
  
16. Annexed to this Note is a glossary of some of the common legal terms which feature in property transactions including leases. Some terms are specific to commercial property transactions.

**Other Legal Topic Notes (LTNs) relevant to this subject:**

<b>LTN</b>	<b>Title</b>	<b>Relevance</b>
35	Contracts	Explains the components which create a contract.
41	The responsibilities of councils as landowners	Sets out the basic statutory and common law duties and liabilities arising from ownership of land (including leasehold ownership).
45	Disposal and appropriation of land by local councils	Explains the statutory duties which councils are subject to when leasing premises.
46	Registered land	Sets out the benefits of registering leasehold ownership with the Land Registry.
47	Easements	Explains the nature and creation of easements.
48	The difference between Leases and Licences	Describes the form, effect and consequences of licences.
49	Business Tenancies	Explains the Landlord and Tenant Act 1954.
50	The Agricultural Tenancies Act 1995	Confirms that it is a criminal offence for an unqualified person to prepare a farm business tenancy.
62	Planning control over agricultural land and buildings	Considers planning concerns relating to premises used for agriculture.
68	Negligence	Confirms the need for tenants and occupiers of premises to have sufficient insurance cover (e.g. public liability) in place.
76	Energy Performance requirements	These are relevant in freehold and leasehold sale transactions and in respect of the occupation of buildings.
82	Compulsory purchase orders	Sets out the procedure for local councils to compulsorily purchase land.

## **ANNEX TO LEGAL TOPIC NOTE 75**

### **Glossary of terms commonly used in leases**

#### **Absolute title**

This is the best of the four classes of title that the Land Registry give to land.

#### **Abstract of title**

A summary of the title deeds and documents which prove title to unregistered land. Nowadays an epitome of title (see below) is normally used.

#### **Acknowledgement and undertaking**

A confirmation contained in a deed that the person named has the right to see a document not in his possession and a promise that the person who has possession of that document will keep it safe.

#### **Additional rent**

A sum payable under a lease (eg service charge payments) which is to be treated as rent, giving the landlord the same remedies as if it were rent.

#### **Adverse Possession**

The occupation of land without the permission of the owner. In certain circumstances after 12 years of such possession (unregistered land) or 10 years in registered land, the occupier may gain title to the land. See also Legal Topic Note 55 - Claiming Ownerless Land.

#### **Adverse rights**

Sometimes used to refer to the rights which someone other than the owner may have over land.

#### **Agreement for sale**

Another name for the contract setting the agreed terms of a sale.

#### **Alienation clause**

Provision in a lease which restricts the tenant's rights to assign or sublet.

#### **Apportionment**

The process of adjusting the purchase price of land to take account of outgoings that affect it. So, in leasehold property, rent and service charges are normally paid in advance, so on completion of the sale the buyer will have to pay to the seller an extra sum equivalent to the payments in advance made by the seller.

#### **Appurtenant**

A right benefiting a piece of land (eg an easement) can be said to be 'appurtenant' to that land. It will pass automatically on the transfer of that land.

#### **Arbitration clause**

A clause in an agreement (eg a lease) requiring disputes to be referred to a third party for resolution in accordance with the Arbitration Acts.

**Arms length**

A transaction between parties who are not associated in any way.

**Assign**

To transfer a right in property over to another. Usually used to signify the transfer of a lease.

**Assignee**

The Person who receives the property being assigned.

**Assignment**

The document by which property is assigned – again usually used in relation to the transfer of leases.

**Assignor**

The person who transfers the property.

**Attestation Clause**

The part of the document containing the signatures of the parties.

**Bailiff**

An officer of the court charged with serving documents and enforcing judgements.

**Banker's Draft**

A cheque drawn by a bank (rather than by a private individual) usually on its own head office. It is generally accepted as the equivalent of cash, although it needs to be paid through the banks' "clearing system" in the same way as any other cheque.

**Beneficial Owner**

The person who is entitled to enjoy the benefit of property (as opposed to a trustee who owns land for the benefit of someone else).

**Benefit (of a covenant)**

The right to enforce compliance with it.

**Body of deed**

The operative part of a deed – as opposed to the recitals.

**Boiler plate clause**

Standard provision included in a legal document.

**Break clause**

Clause in a lease which allows one party to terminate the lease before its normal expiry date.

**Bridleway**

A path or road over which the public have the right to pass on foot or with horses and bicycles, but NOT with vehicles.

**Building Regulation Approval or Consent**

Confirmation that the plans for proposed building work show that it will comply with the Building Regulations. All building work has to comply with prescribed standards and the

local authority is charged with ensuring compliance (although the NHBC will normally undertake such responsibility in relation to a new house to be covered by their structural insurance).

### **Building lease**

Long lease under which the tenant is obliged to carry out some building work on the demised property.

### **Burden (of a covenant)**

The obligation to comply with it.

### **Call option**

An agreement under which a party can, within a defined period, 'call' on (or compel) the other to sell his property.

### **Caution**

Under LRA 1925 a method of protecting a third party right in registered land. Could be entered on the register without the consent of the proprietor. Cautions can no longer be used under LRA 2002, but existing registrations remain effective.

### **Caveat emptor**

Let the buyer beware – emphasising that it is the buyer's responsibility to discover problems with the property, not the seller's to disclose them.

### **Cesser**

The premature ending of a right.

### **Charge**

An interest in land securing the payment of a debt; a mortgage.

### **Chattels**

Items of property other than land e.g. furniture. They will be excluded from the sale of land – unless there are specific provisions in the contract to the contrary.

### **Chief rent**

Used in certain parts of the country to describe a rentcharge.

### **Clear lease**

A lease under which the landlord is under no liability to pay for insurance and repairs i.e. the rental income is "clear" of these obligations.

### **Comfort letter**

A letter under which an assurance is given that the sender will behave in a particular way e.g. that the sender will provide funds for a particular purpose.

### **Common land**

Land over which the inhabitants of a locality can exercise rights e.g. grazing.

**Common parts**

The parts of a development used in common by all the occupiers e.g. the hallway and stairs in a block of flats or the car park in a business park.

**Concurrent lease**

A lease granted to run at the same time as an existing lease. The tenant under the concurrent lease will then become the landlord of the tenant under that existing lease. Sometimes used in flat management schemes.

**Conservation area**

An area of special architectural or historic interest so designated by the local authority in order to preserve or enhance its character or appearance. Special planning rules will apply restricting development in this area.

**Conveyance**

The document used to transfer ownership to another. Usually used in unregistered land.

**Corporeal hereditament**

Physical property e.g. land, buildings – as apposed to incorporeal hereditaments such as easements.

**Counterpart lease**

A lease is normally drawn up in two identical copies. The lease (signed by the landlord) and the counterpart signed by the tenant. Each party then keeps the part signed by the other.

**Covenant**

An obligation entered into by a landowner. In certain circumstances this can be binding on subsequent owners of the land.

**Curtilage**

Old fashioned term used to refer to the land occupied along with a property e.g. the garden of a house.

**Dedication**

Giving rights over land for public use e.g. the dedication of land for use as a highway.

**Deed**

A document executed in accordance with various formal requirements. It must be signed and witnessed and then delivered.

**Defective Title Insurance**

Insurance taken out to protect a buyer and/ or lender against the consequences of a specified defect in title up to the financial limit specified in the policy.

**Delivery**

One of the formal requirements for a deed. A deed will be delivered when the signatory intends it to be binding on him. This will usually on payment by a buyer of the purchase price.

**Demise**

A lease; the grant of a lease. Sometimes used to indicate the property granted by a lease.

**Devise**

A gift of property by a will.

**Disbursements**

Payments made by a solicitor on behalf of the client e.g. search fees.

**Distress**

Seizing possessions of a tenant to secure payment of rent.

**Dominant tenement**

The piece of land which benefits from an easement.

**Due diligence**

The proper steps to be taken by a professional in connection with a particular transaction to ensure that it is lawful.

**Easement**

A right over one piece of land for the benefit of another e.g. a right of way.

**Enfranchisement**

In leases, the process of tenants acquiring the freehold in their land.

**Engrossment**

The final version of a document which will be signed by the parties. Traditionally prepared on better quality paper than mere "drafts" of the document.

**Epitome of Title**

A chronological list of the documents which prove title to unregistered land. It will usually be accompanied by photocopies of the documents.

**Escrow**

A deed which has been signed but only delivered conditionally. It will not become operative until the condition (e.g. the payment of the money) is fulfilled.

**Estate rentcharge**

A rentcharge imposed on freehold land to ensure the running of the burden of positive covenants.

**Execution**

Signing and delivering a deed to make it legally effective.

**Fair wear and tear**

Damage caused by the ordinary operation of natural causes. Sometimes in a lease a repairing obligation does not include damage caused in this way.

**Fine**

A non-returnable lump sum payable by a tenant to a landlord on the grant of a lease in addition to rent. A payment.

**Fixtures**

Items fixed to land which become part of it and will pass to a buyer on a sale, unless specifically excluded by the terms of the contract.

**Forfeiture**

A landlord's right to terminate a lease prematurely and sue on the tenant's breach of his obligations.

**Flying freehold**

A part of a freehold property which lies over land belonging to someone else.

**Good leasehold title**

One of the classes of title conferred by Land Registry. It guarantees the ownership of the lease but not that the landlord had the right to grant that lease.

**Ground rent**

The rent payable to a landlord, particularly in relation to leasehold houses and flats where the tenant will have paid a premium on the grant of the lease to cover the cost of the house and will effectively just be renting the 'ground' on which the building stands.

**Habendum**

The part of a deed which describes the property being transferred.

**Head Lease**

A lease granted directly by the freeholder. Used where the tenant under that lease has then granted a sub-lease of all or part of that property.

**Heads of Terms**

The fundamental terms of an agreement which will then form the basis of the formal contract between the parties when it is drawn up by the lawyers.

**Hereditament**

Real property; land.

**Holding**

The area of land demised to a tenant.

**Holding Over**

The act of a tenant remaining in possession of the land at the end of a lease.

**Improvements**

Changes to property which increase its value.

**Incorporeal hereditament**

An intangible right over land e.g. an easement.



**Incumbrance**

An adverse right affecting a property e.g. a mortgage or a covenant.

**Indemnity**

An agreement to reimburse or compensate someone in relation to some possible future liability.

**Indemnity covenant**

A promise to indemnify someone against a possible future loss or expense. Often included in a transfer to protect a seller against a possible breach and obligation by the buyer for which the seller could be liable.

**Indenture**

A deed made between two parties. Historically, each party was given his own copy both of had been written on the same document which was then cut into two using a wavy line.

**Inhibition**

Under LRA 1925 a method of protecting third party rights over the land. Any disposition was prevented in the circumstances prescribed e.g. on bankruptcy.

**Joint and several**

An obligation entered into by two or more persons under which they are 'severally' or individually liable (e.g. for the full amount of debt) as well as jointly liable with the others.

**Laches**

Delay in enforcing a right.

**Lady Day**

March 25<sup>th</sup>. The feast of the Annunciation of the Virgin Mary. One of the usual quarter days.

**Lessee**

Tenant under a lease.

**Lessor**

Landlord under a lease.

**Lien**

The right to hold onto another's property as security for a debt.

**Managing agent**

Someone appointed to oversee the day-to-day maintenance of a property e.g. a block of flats or a shopping centre.

**Mesne**

Intermediate

**Mesne profits**

Compensation due to a landowner for the unlawful occupation of his land e.g. by a tenant who holds over without the landlord's consent.

**Message**

Old fashioned term for a dwelling house.

**Michaelmas**

September 29<sup>th</sup>. The feast of St Michael. One of the usual quarter days.

**Midsummer Day**

June 24<sup>th</sup>. The feast of St John the Baptist. One of the usual quarter days.

**Minor Interest**

Under the Land Registration Act 1925, an interest which had to be protected by an entry on the register in order to bind a purchaser.

**Office copies**

The name formerly used for official copies – but still often used in practice.

**Official copies**

Copies of the register entries relating to a title.

**Overage**

The potential right, on a sale of land, to receive extra payments over and above the sale price, should the land sold increase in value in the future, for example on the grant of planning permission.

**Party wall (or fence)**

A wall (or fence) owned jointly by adjoining landowners over which both have rights and responsibilities as to maintenance.

**Peppercorn rent**

A nominal rent.

**Perpetuity**

For ever.

**Planning permission**

Permission required from the local authority to develop land.

**Possessory Title**

One of the classes of title the Land Registry may grant. Often approved when the owner claims to have lost the title deeds, or to have acquired ownership by adverse possession.

**Pre-emption**

A right of first refusal.

**Premium**

A non-returnable lump sum payable by a tenant on the grant of a lease in addition to rent.

**Prescription**

A method of acquiring legal easements by a long user – often 20 years user as a right will suffice.

**Public bridleway**

A path or road over which the public have the right to pass on foot or with horses and bicycles, but NOT with vehicles.

**Public footpath**

A path over which the public have rights to pass on foot only.

**Public highway**

A road over which the public have rights to pass on foot and with vehicles.

**Put option**

A contract under which a party has the right to sell his land to another.

**Quarter Days**

25<sup>th</sup> March; 24<sup>th</sup> June; 29<sup>th</sup> September; 25<sup>th</sup> December. The only days on which (traditionally) rent was payable. Still much used in commercial leases as rent payment days.

**Reddendum**

The part of a lease which specifies the rent payable.

**Rentcharge**

A sum of money payable by the owner of freehold land.

**Riparian rights**

The rights of a landowner over a non-tidal river adjoining his land, e.g. rights to fish.

**Sale and leaseback**

An arrangement in which a landowner sells the freehold and then take back a lease of the property from the new freeholder. Often used to free up capital tied up in freehold land.

**Seisin**

Old fashioned term denoting the possession of freehold land.

**Service charge**

Payment made by an owner of property towards the landlord's costs of the upkeep of the 'common parts' e.g. the repair and maintenance of a block of flats or shopping centre.

**Side letter**

A letter accompanying a legal document e.g. a contract, explaining or clarifying the intentions of the parties.

**Stamp Duty Land Tax**

Tax payable to the Government (inter alia) on the purchase of property or the grant of a lease. Known as stamp duty until 1/12/2003.

**Sub-lease**

A lease granted by a person who is himself a tenant. Must be of a shorter duration than the head lease.

**Surrender**

The premature termination of a lease by agreement between landlord and tenant.

**Telegraphic transfer/TT**

Term still used to signify the transfer of money from one bank account to another e.g. from the buyer's solicitor's bank to the seller's solicitor's bank on completion. The bank's computerised system is used today, but the old term is still used. Often shortened to 'TT'.

**Tenant's Fixtures**

Chattels fixed to leasehold property by a tenant which, although strictly fixtures can be lawfully removed by the tenant.

**Title**

The ownership of a piece of property. Often also used to signify the documents used to prove ownership.

**Transfer**

The document used to pass the ownership of land to another. Usually used in relation to registered land.

**Travelling draft**

The draft of a document that 'travels' between the parties and on which the various amendments required are made. Will nowadays often be sent electronically.

**Tree Preservation Order**

An order made by the local planning authority preventing the felling, or lopping of trees without permission from the local authority.

**Trigger notice**

A notice required to initiate some procedure – usually used in relation to a notice required to initiate a rent review under a lease.

**Turnover lease**

A lease (e.g. of retail premises) where the rent is fixed as a percentage of the annual turnover.

**User**

The use to which a property can be lawfully put.

**Usual quarter days**

March 25<sup>th</sup>; June 24<sup>th</sup>; September 29<sup>th</sup>; December 25<sup>th</sup>. Days on which rent was traditionally payable. Still frequently used in commercial leases as rent payment days.

**Vacant possession**

Having no tenant or other person in occupation.

**Waiver**

The abandonment of a right e.g. forfeiture.

**Warranty**

A promise as to the truth of a statement.

**Yield up**

To give up possession at the end of a lease.

© NALC 2012

**June 2014**

## **PUBLIC RIGHTS OF WAY**

1. The purpose of this LTN is to give an overview of the law relating to public rights of way in England and Wales. It describes what they are, how they are created and issues that are particular to local councils. The LTN also briefly deals with other rights of way – permissive rights of way and private rights of way. Easements, which are private rights of way, are also dealt with in LTN 47 – Easements and LTN 57- Easements over Common Land and Village Greens.

### **What are public rights of way?**

2. Members of the public can use a public right of way without the permission of the owner of the land. Public rights of way can be roads, paths or tracks, and can run through towns, countryside or private property. Members of the public can also cycle, drive a car or ride a horse on some public rights of way. Some public rights of way are maintainable at public expense.
3. Landowners and occupiers must ensure that a public right of way is not obstructed by crops, vegetation or anything else, that the route is identifiable and the surface is restored soon after cultivation.

### **The Definitive Map**

4. The Definitive Map is the map of all public rights of way. Highway authorities (county councils or unitary authorities and in Wales, county boroughs and county councils) are required to maintain the Definitive Map in their area. The Definitive Map can be inspected at the highway authority's offices. In many counties, the Definitive Map, or part of it, is available on the highway authority's website. Four categories of rights of way are recorded on the Definitive Map:

- footpaths
- bridleways
- byways open to all traffic (BOATs)
- restricted byways

They are explained in paragraphs 9 to 14 below.

5. If a public right of way is shown on the Definitive Map and there is no subsequent stopping up order ending the public's right of way (see paragraph 27), then the public right of way is conclusive in law. But a public right of way may not always be on the Definitive Map. For example, there may be paths that are not on the Definitive Map that have acquired public rights of way as a result of many years of public use (see paragraph 20).
6. Under the Countryside and Rights of Way Act 2000 ('the CROW Act 2000') footpaths and bridleways that are not recorded on the Definitive Map by 1 January 2026, that have only been classified as a footpath or bridleway and that were in use before 1949 will automatically be stopped up on that date. Rights of way shown on the Definitive Map will be restricted on 1 January 2026 to the rights shown (e.g. a right acquired before 1949 to ride a horse over a footpath will be extinguished)
7. Pursuant to sections 60 to 62 of the CROW Act 2000 each highway authority outside London is required to produce a Rights of Way Improvement Plan and review it at least every ten years.

## **Types of public right of way**

### **Highway**

8. The most common type of public right of way over a defined route is a highway with separate areas for the passage of vehicles (a road) and for pedestrians (a pavement). Section 329(1) of the Highways Act 1980 ('the 1980 Act') confirms that '*the carriageway*' is the part of the highway for the passage of vehicles and that the

'footway' is the part of the same highway with a right of way by foot only.

### **Footpath**

9. Section 329(1) of the 1980 Act confirms a *footpath* is a highway (not being a footway) on which the public have a right of way on foot only. There is no right to cycle or ride a horse on a footpath. It is a civil wrong to ride a bicycle or a horse on a footpath, and action could be taken by the landowner for trespass or nuisance by the user. However, it is not a criminal offence to do so unless there is a traffic order or byelaw in force.
10. Footpath users may take a pram, pushchair, wheelchair, a dog (if on a lead or under close control), stop to rest or admire the view, or take a short alternative route to get round an obstruction.

### **Cycle track**

11. The Cycle Tracks Act 1984 allows a highway authority to designate a footpath as a cycle track. If the proposed cycle track crosses any agricultural land anybody who has a legal interest in that land must give their written consent to the making of the order.

### **Bridleway**

12. Section 329(1) of the 1980 Act confirms a *bridleway* is a way over which the public have right to travel on foot, on horseback or leading a horse. They may also have a right to drive animals of any description along the way. Section 30 of the Countryside Act 1968 permits the riding of bicycles on a bridleway but does not "create any obligation to facilitate the use of the bridleway by cyclists".

### **Byways open to all traffic (BOATs)**

13. Section 66(1) of the Wildlife and Countryside Act 1981 defines a *byway open to all traffic (BOAT)* as a highway over which the public have a right of way for vehicular and all other kinds of traffic but which is used by the public mainly for the purpose for which footpaths and bridleways are used.



## Restricted byways

14. The CROW Act 2000 introduced a *restricted byway*. Section 48 of the CROW Act 2000 defines it as a highway over which the public have a right to travel on foot, on horseback or leading a horse, or by any vehicle (e.g. bicycles, horse-drawn carriages) except mechanically propelled vehicles (e.g. motorbikes or cars). Driving a motorised vehicle on a restricted byway can amount to an offence under the Road Traffic Act 1988.

## Coastal paths

15. Section 296 of the Marine and Coastal Access Act 2009 (“the 2009 Act”) provides for the creation of a pathway for the entire coast of England. This is under the control of Natural England and the Secretary of State. Natural England has reviewed its coastal access scheme. A revised version was approved by the Secretary of State in July 2013. See - <http://www.naturalengland.org.uk>
16. Once established, the coastal path will be maintained partly at public expense and partly at the expense of the land owner. This will normally be by agreement with the landowner, but Natural England has the power to require the landowner to do the work and to do it itself if the landowner fails to do so within a specified period.
17. Section 310 of the 2009 Act amends Part 1 of Schedule 5 to the Government of Wales Act 2006 to give similar powers to the Welsh Assembly in respect of the creation of coastal paths in Wales.

## Creation of a public right of way

18. A public right of way can be created by:
  - dedication
  - prescription
  - agreement
  - order.

## Dedication

19. A footpath, bridleway or restricted byway may be expressly dedicated by the owner as a public right of way. Paths created by express dedication since 1949 are not automatically maintainable at the public expense.
20. A way over any land that has been used by the public as of right for at least 20 years is deemed to have been dedicated as a highway pursuant to section 31 of the 1980 Act unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 years must be continuous immediately before the right to use the way is challenged. Pursuant to section 66 of the Natural Environment and Rural Communities Act 2006 (“the 2006 Act”), usage by a mechanically-propelled vehicle cannot now create a right of way. The 2006 Act was introduced after the decision in **Bakewell Management Ltd v Brandwood [2004]**. The House of Lords decided that a right of way may arise where mechanically propelled vehicles have used a route for the 20-year period, even where that use was without lawful authority and therefore an offence.
21. A local council that wishes to avoid a public right of way being created over its land by 20 years’ uninterrupted use should regularly monitor how its land is used and ensure that either any paths used are periodically closed or appropriate signs are placed to notify users that the use of the way is by permission not by right.

## Prescription

22. For a right of way to be created by prescription, there must be use for at least 20 years continuously up to the date when the prescriptive right is claimed. Such rights must also have been exercised openly, without force nor under protest from the owner and without the land owner’s permission
23. Creation of a public right of way by prescription is rare because the same circumstances will deem creation by dedication pursuant to section 31 of the 1980 Act. Prescription is still important in respect of private rights of way or easements.

## Agreement

24. Section 25 of the 1980 Act permits a county council, district council or London Borough (in Wales, a county council) to enter into an agreement (known as a 'Public Path Creation Agreement') with a landowner to create a footpath, bridleway or restricted byway over land in its area. The principal authority has to consult any other principal authority in whose area the land is situated but there is no provision for any one else to be consulted or to object. The agreement may include terms as to payment or limitations or conditions affecting the public right of way over it. The principal authority must give due notice of new public path creation in at least one local paper circulated in the area in which the land is situated. The route is automatically maintainable at the public expense.
25. Section 30 of the 1980 Act permits a parish council (or community council in Wales) to enter into an agreement with a landowner to create a highway over land in its area or in an adjacent parish (or community in Wales) if the council considers this would benefit its residents. The council is under no obligation to consult anyone. The path is not automatically maintainable at the public expense

## Order

26. Section 26 of the 1980 Act permits a county council, district council or London Borough (in Wales, a county council) to make a "Public Path Creation Order" to create a footpath, bridleway, or restricted bridleway over land in its area if this would be convenient to local residents and if the principal authority has considered the effects of a new path on the land owner. A landowner may claim compensation for loss of the value in and enjoyment of the land. The order does not require anyone's agreement but if a landowner's rights are adversely affected by a proposed right of way or a claim for compensation under section 28 of the 1980 Act is likely, the principal authority should consult with the landowner. If there are no objections, the principal authority can confirm the Public Path Creation Order bringing the path into effect. However, where objections are made, the Order will need to be confirmed or refused by the Secretary of State (in Wales, the Welsh Assembly). Once created, the route is automatically maintainable at the public expense.

## Changing and extinguishing public rights of way.

27. Public rights of way can be permanently “stopped up” or diverted. Pursuant to section 116 of the 1980 Act, a highway authority may apply to the magistrates’ court for an order to stop up a highway (entirely or reduce it to a footpath, bridleway or restricted byway or to divert a highway because it is “unnecessary “ or it can “be diverted so as to make it nearer or more commodious to the public...”.) Notice of the application must be given to the parish (or in Wales, community) council for the area of the highway at least two months before it is made. A court order may result in the stopping up of a highway completely or reserve some form of public right of way. This process may be used, for example, to remove vehicular access whilst retaining a public right of access by foot and on horseback.
28. The 1980 Act permits a district or London Borough (or in Wales, a county or county borough) council to:
- stop up or extinguish a footpath, bridleway or restricted byway where it is not needed for public use (Section 118);
  - divert a public right of way where it can be shown that it is in the interest of the relevant landowner and/or the public to do so, but only where: i) the diverted route would not be substantially less convenient to the public; and ii) the diversion would not alter any point of termination of the path, other than to another point on the same highway, or a connected highway. The diversion’s effect on public enjoyment of the path must also be taken into account before a decision is made (Section 119).
  - extinguish (section 118A) or divert (section 119A) a public right of way that crosses a railway where it can be shown that it is in the interests of public safety, but only if it is not possible to make the crossing safe;
  - extinguish (section 118B) or divert (section 119B) a public right of way for reasons of school security, or for crime prevention in a designated high crime area;
  - divert a public right of way to protect a site of special scientific interest

(section 119D); or

- gate a public right of way to tackle anti-social behaviour (section 129A) but this does not extinguish the public right.

29. When a principal authority makes any of the above orders it must advertise the fact in at least one local newspaper for the area of the public right of way, notify the parish council or parish meeting (community council or community in Wales) for the area of the public right of way and give at least 28 days for objections and representations. If there are no objections the highway authority can confirm the order. If there are objections then the draft order must be submitted to the Secretary of State for confirmation or rejection.

### **Public rights of way maintainable at public expense**

30. As mentioned above a right of way created by a principal authority will automatically be maintainable at the public expense. Other types of right of way can be made maintainable at public expense by a highway authority.

31. Section 228 of the 1980 Act allows a street works authority (County Council or unitary authority and in Wales County Council or County Borough) to declare a private street to be a highway maintainable at public expense. The authority then place "Adoption of Streets" notices at each end of the route. Only the owner of the street (or if more than one, the majority of the owners) has the power to object. If there is an objection, the street works authority can either discontinue or it can go to the magistrates' court for confirmation of the order.

32. Section 43 of the 1980 Act gives a power but not a duty to a parish council (community council in Wales) to repair and maintain footpaths and bridleways or restricted byways. However, this does not empower a parish (or in Wales, a community) council to improve an existing public right of way.

### **Public rights of way not maintainable solely at public expense.**

33. Most public rights of way cross private land. Legal responsibility for them is shared by the landowner and the highway authority. The highway authority's legal

responsibilities under the 1980 Act include:

- keeping rights of way clear of obstructions
- maintaining the widths of paths restricted
- maintaining most bridges and culverts
- maintaining the surface of the path in a condition suitable for its purpose.

34. Landowner/occupier's responsibilities include:

- keeping rights of way clear of overgrowth on their land (i.e. hedges or tree branches across the path)
- maintaining any stiles and gates which are needed on the path (section 146 of the 1980 Act)
- not obstructing the right of way eg by growing crops
- ensuring that no misleading signs or notices are placed on or near a right of way
- providing bridges where new ditches are constructed

35. A principal authority will provide a grant of at least 25% (section 146 of the 1980 Act) towards the landowner's costs of repairing or replacing stiles and gates. Stiles and gates can be erected for stock control but not for security or other purposes and they cannot be erected at all on restricted byways and byways open to all traffic (BOAT).

36. Within a national park, the relevant national park authority is responsible for maintenance of rights of way.

### **Signs and shelters on public rights of way**

37. Section 27 of the Countryside Act 1968 permits a highway authority, after

consultation with the owner or occupier of the land, to place signposts along a public footpath, bridleway, restricted byway or byway.

38. A highway authority may also erect signposts at points where a public footpath, bridleway, restricted byway or byway leaves a metalled (ie tarmac) road. Any other person, including a parish council (a community council in Wales) may erect a signpost on a footpath, bridleway or byway with the permission of the highway authority. The highway authority does not need to provide signposts at these points if the parish council (or chairman of the parish meeting where there is no parish council) for the area is consulted and agrees that such signposts are unnecessary.
39. Pursuant to Section 72(1) of the Road Traffic Regulation Act 1984, a parish (or in Wales community) council may, with the permission of the highway authority, provide on or near any road, other than a footpath or bridleway, traffic signs indicating—
  - a stopping place for public service vehicles
  - a warning of the existence of any danger
  - the name of the parish or community or of any place in it
40. Section 72(2) of the Road Traffic Regulation Act 1984 permits a parish (or in Wales a community) council to provide on or near any footpath or bridleway, any object or device (not being a traffic sign) for conveying to users of that footpath or bridleway a warning of the existence of danger.
41. A parish council may also provide and maintain seats and shelters on any road, or on any land abutting a road, within the parish under section 1(1) of the Parish Councils Act 1957. Permission must be obtained from the landowner or the highway authority as appropriate.

### **Damage to public rights of way**

42. Section 130 of the 1980 Act gives the highway authority the power to “assert and protect” a public right of way.

43. Section 130 of the 1980 Act also empowers a parish council (community council in Wales) to notify the highway authority of an alleged obstruction of, blocking of or encroachment on a public right of way and the highway authority must take action to remove it unless the highway authority concludes that the information is wrong.
44. In some circumstances landowners/occupiers of land are entitled to plough public rights of way, if it is not reasonably convenient to avoid them. This only applies to cross-field footpaths and bridleways. A landowner/occupier must not plough a field edge path or any byway. However, a field edge path may be ploughed to its minimum statutory width (see paragraph 50 below).
45. Where a cross-field footpath or bridleway is ploughed, it must be reinstated within 14 days of the first disturbance of the cropping cycle and 24 hours of any further disturbance such as harrowing and drilling.
46. Under section 57 of the National Parks and Access to the Countryside Act 1949 it is an offence to place any misleading sign on a public right of way likely to deter people from using it. Only the highway authority can prosecute the offender.

### **Width of public rights of way**

47. There are no statutory rules which govern the width of public rights of way (except where ploughed see paragraph 50 below) and the width is a matter of fact to be determined on each occasion. The width may be set out in an historical document, or it may be the width of the way between boundaries such as hedges or fences. Alternatively, the width may be that which the public have customarily enjoyed.
48. In the absence of any of these measurements, a highway authority will normally require a reasonable width to be made available which would be sufficient for two users to pass, such as:
  - footpaths - 2 metres;
  - bridleways - 3 metres
  - byways - 5 metres.



49. An encroachment into the width of a public right of way is an obstruction and a criminal offence.
50. Statutory default minimum widths apply to rights of way in relation to ploughing and reinstatement following ploughing (Schedule 12A of the 1980 Act). These minimum widths are:
- headland (field edge) paths: footpaths - 1.5 metres;
  - bridleways - 3 metres;
  - byways - 3 metres.
  - cross-field paths: footpaths - 1 metre;
  - bridleways - 2 metres;
  - byways - 3 metres

### **Access land**

51. The CROW Act 2000 created the right for the public to walk on “access land” - open countryside, registered common land and some areas of forest (see section 1 of the CROW Act 2000).
52. Members of the public can walk freely on access land and do not have to stick to footpaths or bridleways. Permitted activities include walking, running, climbing, birdwatching and picnicing. However, horse riding, camping, swimming and cycling are not allowed. Horse riders, cyclists and motor vehicles must keep to existing rights of way (Schedule 2 of the CROW Act 2000). Landowners and tenants are able to restrict or exclude public access to access land for up to 28 days per year (section 22 of the CROW Act 2000), whereas public rights of way must remain open at all times.

## OTHER RIGHTS OF WAY

### Permissive rights of way

53. Some rights of way can be used by the public only with the permission of the landowner. A permissive right of way can be created by written agreement between the land owner and a local council. Alternatively it can be created simply by the land owner allowing its use.
54. To ensure that it remains a permissive right of way, the land owner must take action to prevent the creation of a public right of way by prescription (see paragraph 22). This assertion of right is normally done by:
- erecting signs at either end of the permissive path stating that it is not a public right of way and setting out any conditions for the use of the path (such as times when it can be used);or
  - physically closing the path for short periods. An example of this is locked gates on permissive rights of way on railway property on Christmas Day. This causes minimal inconvenience but shows that the rights of way are permissive only.

### Private rights of way

55. Private rights of way over land are known in law as easements. They are rights over another person’s land and can only be used for the benefit of the adjoining land in question. These are dealt with in a separate Legal Topic Note (LTN 47 – Easements).

### Other relevant Legal Topic Notes (LTNs):

LTN	Title	Relevance
42	Occupiers’ Liability	Distinguishes between legal duties owed to visitors and trespassers. Relevant to permissive paths, access land and stiles/signs on public rights of way.

43	Private Access to Council Land	Sets out further circumstances in which individuals may trespass onto council land.
47	Easements	Explains private rights of way and how they are created
53	Protection of Common Land	Sets out the powers of local councils to combat trespass with particular reference to common land and to the Human Rights Act 1998.
57	Easements over Common Land and Village Greens	Sets out the powers of local councils to grant easements over common land and village greens.
72	Highways	Sets out the powers of local councils in respect of highways.
82	Compulsory purchase orders	Sets out the procedure for local councils to compulsorily purchase land.
83	Neighbourhood Planning England	Sets out the procedure for obtaining a Neighbourhood Development Plan or Neighbourhood Development Order.





B&Q  
 Penrith 1316  
 Cavendish Way, Penrith, Cumbria  
 CA11 7GS  
 01768-861300  
 Email: Penrith.DutyManager@b-and-q.co.uk  
 90 Days Returns Policy  
 See Overleaf

\*\*\*\*\* DISCOUNT SALE \*\*\*\*\*  
 Discount card number: 6056669816661574

1x	HEX NUTA2 SS8X X10	
	3663602744672	£3 14
1x	HAMMERITE SMOOTH PAINT GOLD 250M	
	5011867010830	£13 00
2 Item(s)		
B&Q Club: 0.00%		£0 00
TOTAL		£16 14
Card sale		-£16 14

\*\*\*\*\*0812  
 1807200892094024

VISA	VISA CONTACTLE
Number:	*****0812
Auth Code:	054411
AID:	A000000000001010
App Date:	
App Seq No: 00	Issue:
Merchant ID: ##768E7	
Terminal ID: #####1086	
Permanent TID: 31677951	
Reference: 0154 1316 131681	

Please debit my account

CARDHOLDER DEVICE VERIFIED



RT131613168121052301546

Transaction in accordance with notified terms and conditions.

\*\*\*\*\*  
 Shopping is now faster and easier than ever with the B&Q app. Search "B&Q" in the App Store and Google Play store today.  
 \*\*\*\*\*

Please retain for your records.

31/06/2023 16:54 1316 081 0154



# Kirkoswald Parish Council

## Clerk's Expenses September 2023

Postage



Heartbeat trust 2 AUG



Travel  
Agendas

Miles @per mile  
52 £ 0.47

VAT

Total

£ 0.75

£ 0.75

£ 0.75

£ 24.39

Totals

£ -

£ 26.64

**From:** Royal Mail Support no-reply@royalmail.com  
**Subject:** Royal Mail - Postage Confirmation for WP-1395-9166-690  
**Date:** 19 August 2023 at 12:01  
**To:** kirkoswaldparishcouncil@hotmail.co.uk

RS



Thank you for your order.

**You have made a payment of £0.75 to the Royal Mail Group Ltd.**

**Reference:** WP-1395-9166-690

**Date & time:** Saturday, 19 August 2023 12:01

You have confirmed that you are not sending any item which is [prohibited or restricted](#) in the UK.

A summary of your purchase is set out below, and details of this purchase - along with links to re-download your documents and view your QR codes, and request refunds - will remain available for you to view for up to 21 days on the [payment confirmation page](#).

## Purchased postage

**Destination:** [REDACTED]

**Postage service:** Royal Mail 2nd Class

**Postage cost:** £0.75

**Item must be posted by:** Saturday, 26 August 2023



**Payment service provider:** WorldPay

## Next Steps

### Option 1: If you have arranged a collection

- Make sure your item is packaged securely and that you have attached the label to your item before your scheduled collection time.
- Your item(s) will be collected by us on the selected collection day.
- If you've selected our Bring My Label option then we will bring your labels with us when we come to collect your item(s).
- If you have additional prepaid Royal Mail items on the day we collect, and you've printed the labels, just ask your postie and they may be able to take them.

**From:** Royal Mail Support no-reply@royalmail.com  
**Subject:** Royal Mail - Postage Confirmation for WP-2079-8152-240  
**Date:** 2 August 2023 at 10:46  
**To:** kirkoswaldparishcouncil@hotmail.co.uk

RS



Thank you for your order.

**You have made a payment of £0.75 to the Royal Mail Group Ltd.**

**Reference:** WP-2079-8152-240

**Date & time:** Wednesday, 02 August 2023 10:46

You have confirmed that you are not sending any item which is [prohibited or restricted](#) in the UK.

A summary of your purchase is set out below, and details of this purchase - along with links to re-download your documents and view your QR codes, and request refunds - will remain available for you to view for up to 21 days on the [payment confirmation page](#).

## Purchased postage

**Destination:** Vickie Joskow, The Community Heartbeat Trust, Po Box 168, Haverhill, Suffolk, CB9 1AX

**Postage service:** Royal Mail 2nd Class

**Postage cost:** £0.75

**Item must be posted by:** Wednesday, 09 August 2023



QR code  
unavailable

**Payment service provider:** WorldPay

## Next Steps

### Option 1: If you have arranged a collection

- Make sure your item is packaged securely and that you have attached the label to your item before your scheduled collection time.
- Your item(s) will be collected by us on the selected collection day.
- If you've selected our Bring My Label option then we will bring your labels with us when we come to collect your item(s).
- If you have additional prepaid Royal Mail items on the day we collect, and you've printed the labels, just ask your postie and they may be able to take them.

**From:** Royal Mail Support no-reply@royalmail.com  
**Subject:** Royal Mail - Postage Confirmation for WP-2780-4060-301  
**Date:** 8 July 2023 at 12:03  
**To:** kirkoswaldparishcouncil@hotmail.co.uk

RS



Thank you for your order.

**You have made a payment of £0.75 to the Royal Mail Group Ltd.**

**Reference:** WP-2780-4060-301

**Date & time:** Saturday, 08 July 2023 12:02

You have confirmed that you are not sending any item which is [prohibited or restricted](#) in the UK.

A summary of your purchase is set out below, and details of this purchase - along with links to re-download your documents and view your QR codes, and request refunds - will remain available for you to view for up to 21 days on the [payment confirmation page](#).

## Purchased postage

**Destination:** [REDACTED]

**Postage service:** Royal Mail 2nd Class

**Postage cost:** £0.75

**Item must be posted by:** Saturday, 15 July 2023



**Payment service provider:** WorldPay

## Next Steps

**Option 1: Print your label at home, attach your label to your item, then drop your item off at one of the following locations:**

- Drop off into a post box - available if your item is small enough, you don't require proof of postage, and you've not selected a tracked or signature service
- Drop off at one of our new Parcel Postboxes - [find one near you](#)
- Drop off any item at a [Royal Mail Delivery Office](#).
- Or drop off at a [Post Office®](#) branch