Rights of Way Enforcement Policy and Procedures

Our goal is to attain open, accessible public rights of way as soon as is practicable after any problem is brought to our attention. We will endeavour to work with landowners to achieve this; however we will take enforcement action if necessary to ensure that this happens.

Introduction

Doncaster Council as the Highway Authority has a statutory duty to ensure that the rights of way network is maintained to a suitable standard and is free from obstruction, so that it can be used and enjoyed by all lawful users.¹

There are approximately 466 kilometres of public rights of way within the borough providing access to the area’s diverse and varied countryside, as well as linking residential areas with local amenities. The network provides safe alternative routes away from vehicular traffic; is an important resource for recreation and contributes to the local health agenda. It also brings economic benefits to the area.

Users may encounter problems when on the rights of way network, ranging from locked gates and blocked routes, through to ploughed and cropped paths. This policy and procedure outlines the approach to be taken by the Rights of Way team when taking enforcement action to remedy such problems.

We are committed to:-

- Openness – We will provide information and advice in a plain language on the legislation we enforce and ensure that those against whom enforcement action is taken are aware of the legislative requirements and are aware of the likely consequences of non compliance;

- Helpfulness – We consider that prevention is better than cure and we will actively work with landowners and occupiers to advise on and assist with compliance with the law;

- Consistency – We will carry out our duties and enforce the law in a fair, equitable and consistent manner;

- Proportionality – We will, as far as the law allows and where co-operation is given work with farmers and landowners so that they can meet their legal obligations without unnecessary expense. We will take into account the costs of compliance by ensuring that any enforcement action we take, or remedial action we require is proportional to the risks posed and to the seriousness of any breach of the law.

- Complaints about our service – All complaints will be dealt with under Doncaster Council’s formal complaints procedure, which is available online and to all service users and which explains the rights of complaint and appeal, including the likely timescales involved.²

¹ Section 130 Highways Act 1980
² http://www.doncaster.gov.uk/talk_to_us/customer_services/making_a_complaint.asp
Legislation

The legislation governing rights of way outlines various courses of action depending on the nature and severity of the offence committed. The table below outlines some of the commonly encountered problems and the Statutory Provisions available to remedy them.

<table>
<thead>
<tr>
<th>Identified problem</th>
<th>Possible courses of Action</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excavation across a path or damage to the surface of the highway</td>
<td>Prosecution under s131 and s131A of the Highways Act 1980.</td>
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<tr>
<td>Things deposited on the highway so as to cause a nuisance or damage</td>
<td>Prosecution for damage under s131 and s131A of the Highways Act 1980 Serve Notice under s149 of the Highways Act 1980</td>
<td>s149 allows the removal of things deposited, without notice being served, if it ought to be removed without delay. If Notice is served and the obstruction is not removed, then application to the Magistrates Court must be made for a removal and disposal order.</td>
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<tr>
<td>Disturbance of the surface of a footpath/bridleway or any other highway, not comprising a carriageway</td>
<td>Prosecution under s131A of the Highways Act 1980 Reinstatement using provisions of Schedule 12A of the Highways Act 1980</td>
<td>Both courses of action are available and can be used in conjunction, but consideration must be given to what will achieve the best result</td>
</tr>
<tr>
<td>Ploughing of a headland path</td>
<td>Prosecution under s131A of the Highways Act 1980 Reinstatement using provisions of Schedule 12A of the Highways Act 1980</td>
<td>Both courses of action are available and may be used in conjunction. Consider what action will achieve the best result</td>
</tr>
<tr>
<td>Failure to reinstate a cross field path</td>
<td>Prosecution under s134 of the Highways Act 1980 Reinstatement using provisions of Schedule 12A of the Highways Act 1980</td>
<td>Both courses of action are available and may be used in conjunction. Consider what action will achieve the best result</td>
</tr>
<tr>
<td>Wilful obstruction of a public right of way</td>
<td>Prosecution under s137 of the Highways Act 1980 Removal of a structure under s143 of the Highways Act 1980 Removal of the obstruction s149 of the Highways Act 1980 s143 requires a period of 1 month to be given, if the cost of removal is to be recharged. Access is available only over the route of the Public Right of Way s149 allows the removal of things deposited, without notice being served, if it ought to be removed without delay. If Notice is served and the obstruction is not removed, then application to the Magistrates Court must be made for a removal and disposal order</td>
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<tr>
<td>Obstruction by crops</td>
<td>Prosecution under s137A of the Highways Act 1980 Reinstatement under schedule 12A of the same act</td>
<td>Direct action to remove the crop can be carried out at the expiry of the Notice (within the provisions of Schedule 12 A of the Highways Act 1980).</td>
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<tr>
<td>Bridle gates of less than 5 feet width</td>
<td>Serve Notice under s145 of the Highways Act 1980</td>
<td>No provision to take direct action in default of notice. Failure to comply with the Notice is reportable to the Magistrates court.</td>
</tr>
<tr>
<td>Gates and Stile out of repair</td>
<td>Serve Notice under s146 of the Highways Act 1980</td>
<td>Repairs can be carried out at the expense of the landowner after 14 days. All repairs should conform to</td>
</tr>
<tr>
<td>Overhanging vegetation</td>
<td>Serve Notice under s154 of the Highways Act 1980</td>
<td>Removal of the vegetation can be carried out after the Notice expires and all reasonable costs recovered.</td>
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<tr>
<td>Barbed Wire adjacent to a highway</td>
<td>Serve Notice under s164 of the Highways Act 1980</td>
<td>There is no provision to take direct action and remove the barbed wire in default of the Notice. An application to the Magistrates court needs to be made. Consider at the outset the likelihood of persuading a Magistrate that barbed wire is a nuisance.</td>
</tr>
<tr>
<td>Misleading signs or notices on or near a public right of way</td>
<td>Prosecution under s57 of the National Parks and Access to the Countryside Act 1949</td>
<td>Under s57 of the National Parks and Access to the Countryside Act 1949, the Magistrates have the power to fine, order the removal of the sign or both. Under s132 the highway authority has power to remove any picture, letter, sign or other mark which has been affixed upon the surface of the highway or upon any tree, structure or works on or within the highway which has been placed without the consent of DMBC or consent given by or under any other enactment.</td>
</tr>
<tr>
<td>Bulls, Dogs and other Animals</td>
<td>Prosecution under s59 of the Wildlife and Countryside Act 1980, Prosecution under s3 of the Health and Safety at Work Act 1974, Prosecution under the Dogs Act 1871, Dangerous dogs Act 1989 and 1991, Prosecution under s2 of the Animals Act 1971</td>
<td>Under s59 of the Wildlife and Countryside Act 1981 it is an offence for certain types of bull to be at large in a field crossed by a public right of way. s3 of the Health and Safety at Work Act 1974 places an obligation on employers not to put at risk the health and safety of persons not in their employment. Enforcement is primarily the responsibility of the Health and safety Executive. s2 of the Animals Act 1971 makes the keeper of any animal liable for damages if it injures another person, provided that the keeper was aware of the animal’s tendency to cause injury.</td>
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Considering the legislation and the options available, our general approach to enforcement is as follows.
Approach 1 – Enforcement Notices

Where the legislation permits the serving of enforcement notices, the usual procedure will be to serve notice straight away, i.e. after a problem has been verified and action is required to resolve the issue. The advantages to this are:

- It reduces the number of subsequent site visits required and the associated costs;
- Issues will be resolved quicker. The notice defines a specific time period in which to comply;
- Offenders still get the opportunity to remedy the problem within the specific timescale outlined within the notice and without further enforcement action being taken, if the work carried out is satisfactory;
- The perception of the public is that something is being done to remedy the problem encountered. In view of this, the complainant will be kept informed of progress throughout the process.

Enforcement notices will explain what is wrong, what is required to put things right and the likely consequences if the notice is not complied with. A letter will also accompany the notice which will clearly explain why the action is necessary and over what time scale it should be completed. We will also ensure that legal requirements are clearly distinguished from any recommendations. The letter and notice will be sent recorded delivery to the relevant landowner/occupier. If a landowner cannot be identified, then a notice will be posted on the public right of way in the vicinity of the offence, stating whom to contact.

The length of time specified for carrying out any remedial work will be dependent on a number of factors including whether it is a first or repeat offence and the legislation under which the enforcement action is being taken. Failure to comply with the notice within the specified time will result in the Authority carrying out the work and recovering all the associated costs from the landowner/occupier.

The flow chart below outlines a summary of the procedure:
**Approach 2 – Prosecution**

Prosecution is viewed as a last resort and will only be considered when all other attempts to secure compliance have failed. Before deciding whether a prosecution will be taken against a landowner/occupier, the Authority will consider several factors including:

- The seriousness of the offence, i.e. is the offence potentially dangerous and is there a significant risk to public safety;
- Is there a history of repeat or similar offence;
- Is the landowner/occupier willing to prevent a recurrence of the problem and co-operate with officers;
- Is it in the public interest to prosecute;
- Is there a realistic prospect of conviction;
- Would any other action be more appropriate or effective.

**Approach 3 – Action through the Magistrates Court**

3 These factors are NOT listed in order of significance. The rating of the various factors will vary with each situation under consideration
Should it be necessary to take an enforcement case to the Magistrates Court, (see previous table), then a detailed case will be prepared. It is therefore essential that all records are kept up to date from the very beginning of the enforcement action and that all details are recorded as accurately as possible.

**Approach 4 – Use of Public Path Orders to Divert a Path**

Some obstructions on the rights of way network may be longstanding and of such a nature that successful enforcement action could be costly, or difficult to achieve. An example might be where a building was constructed over a right of way some time ago. In such cases the making of a public path order, for example a diversion order to bypass the obstruction may be a more appropriate and efficient course of action. However we will not overlook the obstruction of a public right of way, because it would be awkward to take direct action or prosecute offenders. As a result, the use of public path orders to deal with obstructions will only be considered in very limited circumstances, specifically when:

- The obstruction is not of recent origin, for which the timescale will be judged on the particular circumstances of the case;
- An alternative route exists that fulfils the requirements of the relevant Public Path Order legislation.

When it is considered that a public path order is acceptable, the normal order procedures will be followed including the recovery of the Council’s costs, where feasible and cost effective. In the event of the application being unsuccessful, for whatever reason, then the case will be dealt with as a standard enforcement issue.

**Prioritisation**

Obstructions found on the rights of way network vary in their level of impact and whilst only a certain number seriously impact on the public’s enjoyment, it is important that all obstructions are addressed. The timescales for dealing with issues will vary according to the legislation. We will deal with issues as quickly as possible and will prioritise our enforcement accordingly:

1. **High Priority** – Where incidents meet one or more of the following criteria:
   - continuation of the obstruction provides an unacceptable health and safety risk;
   - resolution of the obstruction will provide a significantly enhanced rights of way network;
   - resolution will contribute to other Council objectives;
   - the obstruction adversely affects a promoted route or well-used route;
   - a significant number of valid complaints have been received about the obstruction from a variety of independent sources;
   - the obstruction relates to a ploughed or cropped field.

2. **Medium Priority** – Where obstructions do not meet the criteria set out above, but do have a negative impact on the public’s enjoyment of the path.

3. **Low Priority** – Where the obstruction has negligible impact on the public use of the path. The obstruction will be recorded on our database. The rights of way team will resolve the issue if the problem deteriorates or when an opportunity
arises, for example when a high/medium priority problem occurs on the same path or in the same area.

Specific Procedures

The following section details how we will deal with the specific issues encountered on the rights of way network, taking into account the specific legislation and the general procedure outlined previously.

Ploughing and Cropping Violations

The legal requirements

Section 134 Highways Act 1980 – Where the surface of a path has been ploughed, the occupier shall make good, within 14 days of the first disturbance and within 24 hours of any other disturbance, the surface of the path and indicate the line of the path on the ground to not less than the minimum width.

Section 137A Highways Act 1980 – Where a crop other than grass has been sown or planted, the occupier of the land shall from time to time carry out any necessary work to ensure that the line of the path is apparent on the ground and prevent the crop from encroaching onto the path to not less than its minimum width.

The procedure with respect to ploughing and cropping violations under section 134 and 137A of the Highways Act and the provisions of schedule 12A is as follows:

1. Where a landowner/occupier has not been contacted about an offence within the last three years, they will be advised of their obligations in writing and a formal notice will be served allowing 21 days for the necessary work to be carried out.

2. Where a landowner/occupier has been contacted within the previous three years then they will be advised of their obligations in writing and a formal notice served allowing 14 days for the necessary work to be carried out.

3. In the event of persistent offenders, i.e. where contact has been made annually over the past three years, (with the exception of an initial disturbance) then a notice giving up to 7 days and no less than 24 hours will be served.

4. Where a landowner/occupier fails to carry out the necessary works the Council will carry out the remedial action required and seek to recover all reasonable costs.

5. Where a landowner/occupier has committed an offence annually for the previous three years and where direct action from the Council has been necessary on one or more occasion, then this will be grounds for instigating a prosecution, after all of the particular circumstances have been considered.

6. In all circumstances, the Council may report the offender to the Rural Payment Agency for breach of non-compliance GAEC 8, (Good Agricultural and Environmental Conditions 8).
Unlawful Disturbance of the Surface

S131A Highways Act 1980 – It is an offence for a person, without lawful authority or excuse to disturb the surface of any footpath, bridleway or any that consists of an unmade carriageway and make it inconvenient to use. This includes field edge paths.

The procedure with respect to the disturbance of the surface, without lawful authority under section 131A of the Highways Act and provisions of schedule 12A 3(1) is as follows:

1. Where a landowner/occupier has not been contacted about an offence within the last three years, they will be advised of their obligations in writing and a formal notice will be served allowing 21 days for the necessary work to be carried out.

2. Where a landowner/occupier has been contacted within the previous three years then they will be advised of their obligations in writing and a formal notice served allowing 14 days for the necessary work to be carried out.

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4. Where a landowner/occupier fails to carry out the necessary works the Council will carry out the remedial action required and seek to recover all reasonable costs.

5. Where a landowner/occupier has committed an offence annually for the previous three years and where direct action from the council has been necessary on one or more occasion, then this will be grounds for instigating a prosecution under section 131A, after all of the particular circumstances have been considered.

6. In all circumstances, the Council may report the offender to the Rural Payment Agency for breach of non-compliance GAEC 8.

Removal of Structures Obstructing a Highway or Causing a Nuisance

Section 137 Highways Act 1980 - It is an offence for a person without lawful authority or excuse to obstruct the free passage along a highway.

The procedure for removing a structure including any machine, pump, post or any other object of such a nature that it causes an obstruction under section 143 of the Highways Act 1980 is as follows:

1. Where a landowner/occupier has obstructed a right of way, they will be advised of their obligations in writing and a formal notice served allowing 1 month for the removal of the obstruction.

2. Where a landowner/occupier fails to carry out the necessary work the Council will carry out the remedial action required and seek to recover all reasonable costs.

3. In all circumstances, the Council may report the offender to the Rural Payment Agency for breach of non-compliance GAEC 8.
The procedure for removing objects causing a nuisance, under section 149 of the Highways Act 1980 is as follows:

1. Where something has been deposited on the highway that causes a nuisance, then notice will be served requiring the person to remove it straight away.

2. If the person fails to comply with the notice, then the Council will make a complaint to the Magistrates Court for a removal and disposal order.

3. If the Council considers that the deposit constitutes a danger to users of the highway and that it ought to be removed straight away, then the Council will remove it and recover the costs from the person who deposited it or make a complaint to the Magistrates Court for a disposal order.

4. In all circumstances, the Council may report the offender to the Rural Payment Agency for breach of non-compliance GAEC 8.

Overhanging/Dangerous Trees and Shrubs

The procedure for the removal of overhanging or dangerous trees and shrubs adjacent to the highway, under section 154 of the Highways Act 1980 is as follows:

1. Where a hedge, tree or shrub overhangs a highway so as to endanger or obstructs the passage along a right of way or is likely to cause a danger by falling onto the highway, then the landowner/occupier will be advised of their obligations in writing and a formal notice served giving 14 days in which to lop, cut, or fell to remove the cause of the obstruction/danger.

2. In the event of failure to comply with the notice and subject to any appeal to the Magistrates Court, then the Council will carry out the necessary work and recover all reasonable costs.

3. In all circumstances, the Council may report the offender to the Rural Payment Agency for breach of non-compliance GAEC 8.

Failure to Maintain Structures

The legal requirements

Section 146 Highways Act 1980 – Any stile, gate or other similar structure across a footpath, bridleway or restricted byway shall be maintained by the owner of the land in a safe condition and to a standard of repair that prevents unreasonable interference to path users.

The procedure for enforcing the maintenance of a structure under section 146 of the Highways Act 1980 is as follows:

1. Where a landowner/occupier has allowed a structure for which they are responsible for maintaining to fall into disrepair, they will be advised of their obligations in writing and a formal notice will be served giving 14 days notice of our intention to take all the necessary steps to make the structure safe.
2. Where a landowner/occupier fails to carry out the necessary works, then the Council will carry out all the remedial work and recover all reasonable costs.

3. In all circumstances, the Council may report the offender to the Rural Payment Agency for breach of non-compliance GAEC 8.

**Power to Initiate the Policy**

The power to initiate enforcement action contained within the above policy is delegated to the Senior Public Rights of Way Officer with the exception of instigating a prosecution, which will require a decision from the Head of Service.