

Enforcement Policy

Obstructions (temporary and permanent), issues relating to farming (ploughing and cropping) and materials deposited on the highway



Enforcement Policy

Obstructions (temporary and permanent), issues relating to farming (ploughing and cropping) and materials deposited on the highway

Contents:

1. Introduction	2
2. Obstructed paths not subject to a Public Path Order application or confirmed Definitive Map Modification Order	4
3. Obstructed paths subject to an application for a Public Path Order or Definitive Map Modification Order which would resolve the obstruction issue	5
4. Obstructed paths resulting from a recent Definitive Map Modification Order	8
5. Paths obstructed by ploughing and crops	9
6. Paths obstructed by vegetation other than crops	10
7. Paths obstructed by material, things deposited on the highway, or structures placed across the highway	10
8. Nuisances and hazards near a highway	12
9. Encroachment onto a highway	14
10. Surfacing issues	17
11. Unauthorised and misleading notices	19
12. Costs relating to enforcement action	20
13. Complaints and Mediation	21

Nothing in this policy should be construed as limiting or preventing the implementation of any reasonable enforcement action or legal proceedings which the Council considers appropriate where a public right of way is wilfully obstructed.

Any deviation from this policy must be requested in writing and approved by the Assistant Director - Planning and Development.

1. Introduction

- 1.1. The Definitive Map and Statement are Central Bedfordshire Council's legal record of public rights of way: footpaths, bridleways, restricted byways, and byways open to all traffic. The map informs landowners and tenants whether a public right of way crosses their garden or paddock, or runs around their field or through their farmyard. These routes are as much part of the greater public

rights of way network as our country roads and motorways and enjoy equal protection under the law. Members of the public have the right to use these routes when they wish and should expect to be able to use them freely and without interruption or obstruction.

- 1.2. The requirement that public rights of way are available for public use is a general duty of both the landowner¹ and this Council². Where rights of way are obstructed the Council has a duty to protect the public's right to use the path or way and, where necessary, to seek³ the removal of the obstruction.
- 1.3. Section 130 of the Highways Act 1980 imposes a duty on Central Bedfordshire Council, as the Highway Authority, "*...to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority...*". The High Court case of *Regina v Surrey County Council (ex parte Send Parish Council)* 1979, mandates that the Council, as highway authority, carries out its duty in a reasonable and appropriate manner to facilitate use of the route by those legally entitled to do so. Central Bedfordshire Council has discretion in how and the extent to which it discharges its duty.
- 1.4. This policy is one of a coherent suite of policies and practices which link into the themes within the Outdoor Access Improvement Plan⁴ and are founded on the core values of openness and least restrictive access to the network.

Definitions

- 1.5. For the purposes of this document the term "*land owner*" will mean the owner of the fee simple, or leasehold, if applicable. The term "*occupier*" will relate to the land owner, tenant, occupier or farmer who occupies and actively manages the land, and not to the owner of the land where the owner has leased the land. The term "*path*" will mean any of the following public rights of way: footpath, bridleway, restricted byway, or byway open to all traffic (BOAT), or a cycle track⁵.
- 1.6. For the purposes of this document the term "*permanent features*" include (but are not limited to) the following:
 - Inhabited domestic residences
 - Operational commercial and agricultural buildings
 - Any water feature, the removal of which would require consent under Section 23 of the Land Drainage Act 1991

¹ Highways Act 1980, Section 137 *and other sections*

² Highways Act 1980, Section 130.

³ Central Bedfordshire Council may decide not to seek the removal of an obstruction in circumstances where doing so could expose members of the public using the path to other clearly identified hazards.

⁴ At the time of writing the Outdoor Access Improvement Plan is being re-written.

⁵ As defined within Section 56 of the Wildlife and Countryside Act 1981 and Section 3 of the Cycle Tracks Act 1984 or Section 329 of the Highways Act 1980.

- Any significant⁶ structure constructed by a statutory undertaker for the purposes of its undertaking

1.7. For the purposes of this document a “*long-lived feature*” is something that was constructed or came into being before 1st March 1964 – the date of the first Definitive Map and Statement.

1.8. For the purposes of this document the term “*temporary features*” are things which could be removed without significant difficulty and include (but are not limited to) the following:

- Trees and hedges
- Walls and fences
- Gates and stiles⁷
- Detached garages and greenhouses
- Ponds, slurry pools, muck clamps, animal shelters and pens.
- Hay & straw stacks

1.9. For the purposes of this document a “*long-lived temporary feature*” will be considered to be temporary in nature and capable of removal.

1.10. This policy will be subject to periodic review and amendment by the Rights of Way Team Leader.

2. Obstructed paths not subject to a Public Path Order application or confirmed Definitive Map Modification Order

2.1. Where paths are obstructed by temporary structures or by structures that have been constructed since the paths were recorded on the Definitive Map, the presumption will be that the Council will seek the removal of the obstruction using its powers under the Highways Act 1980⁸ - see Sections 7 and 9 below.

2.2. Where paths are obstructed by permanent and/or long-lived features⁹ and consequently the obstruction could not be reasonably or practicably removed by means of enforcement action, the Council will consider either making a Council-generated Public Path Diversion Order or a Public Path Extinguishment Order to resolve the issue. The Council will take into consideration any Court Order¹⁰ requiring the removal of the obstruction when deciding whether an order should be made.

⁶ The case of *R. v Secretary of State for the Environment, ex parte Barry Stewart (1980)* addressed the issue of permanence of obstructions and found an electricity sub-station to be a temporary feature.

⁷ Where not authorised under Section 147 of the Highways Act.

⁸ The Highways Act 1980 empowers the Council to remove any obstructions, including fencing, gates, vegetation and crops which prevent or impede use of a public right of way.

⁹ See Sections 1.6 - 1.8.

¹⁰ *Ashbrook, R (on the application of) v East Sussex County Council [2002] EWCA Civ 1701*

- 2.3. Where the Council considers making a Public Path Diversion Order, it will require the landowner, where possible, to enter into a permissive path agreement to provide a suitable alternative route for members of the public to use until any Order is confirmed and certified. As part of the agreement, the landowner will be required to defer all Council costs associated with drafting the agreement and maintaining the permissive route.

3. Obstructed paths subject to an application for a Public Path Order or Definitive Map Modification Order which would resolve the obstruction issue

General requirements

- 3.1. Keeping paths open and available for public use is a general duty of both the landowner¹¹ and Central Bedfordshire Council¹². The execution of the Council's duty, however, must be reasonable and proportionate. Whilst there is no justification in directly linking the presence of obstructions on an existing path with the processing of an application to divert or extinguish it, the presumption shall be that all paths that are the subject of an application will be open and available for public use until such time as an extinguishment or diversion order is made and confirmed (and where necessary, certified).
- 3.2. The decision as to whether enforcement action is appropriate, and whether an application to divert or to extinguish a path is appropriate, should be made by the Rights of Way Team Leader¹³ on the merits of each individual case.
- 3.3. The Case Officer, in consultation with the Rights of Way Team Leader, may temporarily waive the requirement that a path should be open and available for public use where he or she deems it appropriate having regard to all the circumstances of the particular case.
- 3.4. Where the legal line of the path is obstructed by temporary structures that can be removed the applicant will be required to open up the path on the legal line until an order has been confirmed and, where necessary, certified.

Requirements for obstructed paths to be diverted under Section 119 of the Highways Act 1980

- 3.5. The requirements relating to a Public Path Diversion Order application affecting an obstructed path are as stated in the Council's **Applications Policy**; namely:

¹¹ Highways Act 1980, Section 137 *et. seq.*

¹² Highways Act 1980, Section 130.

¹³ The power of the Rights of Way Team Leader to authorise the taking of enforcement action is a power delegated down to him under Sections 3.1.2 of Annex H3 (*Scheme of delegation by the Council and by the Executive to Directors and other Officers*) of Central Bedfordshire Council's Constitution.

5.24 *The presumption shall be that all paths that are the subject of an application will be open and available for public use until such time as an extinguishment or diversion order is made and confirmed (and where necessary, certified)...*

5.25 *Where the legal line of a path is obstructed, the applicant will have to make a case in writing why the legal line of a path cannot be made open and available for public use. The Rights of Way Team Leader may, if satisfied by the reasons given, temporarily waive the requirement to have an open path where he deems it appropriate, having regard to all the circumstances of the particular case.*

- 3.6. Where an obstructed path is subject to an application under Sections 119A-D of the 1980 Act, the Case Officer and Rights of Way Team Leader may, if satisfied by the reasons for the application, temporarily waive the requirement to have an open path where they deem it appropriate, having regard to all the circumstances of the particular case.

Requirements for obstructed paths to be extinguished under Section 118 of the Highways Act 1980

- 3.7. The requirements relating to a Public Path Extinguishment Order application affecting an obstructed path are as stated in the Council's **Applications Policy**. Namely:

5.26 *Where an application seeks to extinguish a path the Rights of Way Team Leader may require that the path be monitored for a period of time to assess whether it is used by the public and to what extent. Where the application relates to a route that has been unavailable for public use because of obstructions that cannot be removed, the Rights of Way Team Leader may require that a suitable alternative route be provided so that a comparable level of use may be ascertained.*

5.27 *A suitable alternative route means one on an existing right of way or permissive path of equal or higher status, or on land in the same ownership as the application path along a route that does not impede the passage of the public entitled to use the application path, and which is substantially as convenient for members of the public to use. Where an alternative route is proposed on land in a different ownership the applicant would have to compensate the affected landowner.*

5.28 *The duration of the assessment period will be determined by the Case Officer on a case-by-case basis and will generally be between one month and one year. The applicant will be required to pay any reasonable costs expended by the Council in ascertaining the level of use of the route. The Case Officer has discretion to waive these requirements if a suitable alternative right of way of equal or higher status exists nearby.*

- 3.8. Where an obstructed path is subject to an application under Sections 118A-C of the 1980 Act, the Case Officer and Rights of Way Team Leader may, if

satisfied by the reasons for the application, temporarily waive the requirement to have an open path where they deem it appropriate, having regard to all the circumstances of the particular case.

Requirements for obstructed paths to be deleted under Section 53 of the Wildlife and Countryside Act 1981

- 3.9. The requirements relating to a Definitive Map Modification Order application affecting an obstructed path are as stated in the Council's **Applications Policy**. Namely:

8.8 *Where an application to delete a path relates to a route that has been unavailable for public use because of permanent or long-lived obstructions, the applicant may enter into a formal permissive path agreement with this Council to provide a suitable alternative route where possible whilst the Definitive Map Modification Order application is being determined¹⁴. The alternative route should keep as close to the definitive line of the path where possible and should conform to all the requirements of a public right of way.*

8.9 *The applicant must make every effort to remove any temporary obstructions preventing use of the legal line of the path. The Case Officer may, however, temporarily waive this requirement where he or she deems it appropriate having regard to all the circumstances of the particular case.*

- 3.10. The effect of deleting a path from the Definitive Map is to recognise that the path is either not a public right of way and therefore should not be shown on the Definitive Map or, if it is a public right of way, it is of a type that ought not to be recorded on the Definitive Map. In the latter case, enforcement of the right of way will still be considered.

- 3.11. Section 4 below details the Council's approach in relation to obstructions arising from a recently confirmed Definitive Map Modification Order.

Applications received in response to commencement of enforcement proceedings

- 3.12. Where an application to divert, extinguish, or delete a path is received after enforcement proceedings have begun, the Rights of Way Team Leader has discretion¹⁵ as to whether to continue with the enforcement process or to allow the application to be processed on the condition that a suitable alternative route is provided.

¹⁴ Until a Definitive Map Modification Order is confirmed the map is conclusive legal evidence of the existence of a right of way shown upon it.

¹⁵ In deciding whether to take enforcement action, the Rights of Way Team Leader should have regard to *R. v Lancashire County Council ex parte Guyer (1980)* which removed the duty under S.130 to assert the public's rights where a route was in serious dispute.

Failure of an application

- 3.13. Where an application to either divert, extinguish, or delete an obstructed right of way is refused by the Council, or is not confirmed by the Council or Secretary of State for the Environment, Food and Rural Affairs, the Council will either take enforcement action to open up the legal line of the path and seek to recover any costs associated with doing so; or will make a Council-generated order¹⁶ to resolve the issue. A Council-generated order will seek to provide a route of the Council's own choosing that it considers to be the most acceptable to the users of the right of way.

4. Obstructed paths resulting from a recent Definitive Map Modification Order

- 4.1. Where a public right of way has been modified or added to the Definitive Map by the recent confirmation of a Definitive Map Modification Order and the new line of the path is obstructed, the Council will consider the following factors before acting:
- The nature of the obstruction (permanent, long-lived or temporary);
 - The current or likely future use of the land affected by the path;
 - The surrounding public rights of way network;
 - Representations from the local Ward Members, local town or parish council, P3 and user-groups, and affected landowners;
 - The reason behind the modification order.
- 4.2. Where a Definitive Map Modification Order results in the added or modified right of way being obstructed by a temporary structure, the initial position of the Council will be that the added or modified right of way should be opened up along its definitive line and the temporary obstruction removed.
- 4.3. Where a Definitive Map Modification Order results (or would result if confirmed) in the added or modified right of way being obstructed by a structure which **could** reasonably or practicably be removed by means of enforcement action **and** the circumstances are such that a suitable alternative route could be provided within the legislative tests of the Highways Act 1980, the landowner/occupier should be invited to apply for a Public Path Diversion Order at their expense. This application would be processed in parallel with the Definitive Map Modification Order, with a Public Path Diversion Order being made once the modification order was confirmed.
- 4.4. In cases where the obstruction **could** reasonably or practicably be removed by means of enforcement action, **and** the circumstances are such that there is **no** reasonable alternative route, the landowner/occupier should be invited to apply for a concurrent Public Path Extinguishment Order at their expense. This application would be processed in parallel with the Definitive Map

¹⁶ Whilst the applicant cannot be charged for such an order under the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (as amended), they will be expected to agree not to claim compensation for any order so made.

Modification Order, with a Public Path Extinguishment Order being made once the modification order was confirmed.

- 4.5. Where an application for either a Public Path Diversion Order or Public Path Extinguishment Order has been made as per Sections 4.3 or 4.4, the Council will not unreasonably refuse to make such an order.
- 4.6. Where an application to either divert or extinguish an obstructed right of way under Sections 4.3 or 4.4 is refused by the Council, or an order is not confirmed by the Council or Secretary of State for the Environment, Food and Rural Affairs, the Council will consider whether action should be taken to either open up the legal line of the path, or to make a Council-generated order to resolve the issue as below.

Council-generated orders

- 4.7. The exception to the above points is where the modification order was made to correct an acknowledged error by this or another local authority - in which case any concurrent Order will be Council-generated.
- 4.8. Where an obstruction is considered to be either permanent or long-lived and consequently the obstruction could **not** be reasonably or practicably removed by means of enforcement action, the Council will consider either making a concurrent Council-generated Public Path Diversion Order or Public Path Extinguishment Order to resolve the issue.
- 4.9. A Council-generated order will seek to provide a route of the Council's own choosing that it considers to be the most acceptable to the users of the right of way. Any structures required to facilitate passage by the public will be of the Council's choosing and will comply with the Council's **Structures Policy: Achieving Least Restrictive Access on Central Bedfordshire's Rights of Way**. Widths of Council-generated paths will comply with the Council's **Applications Policy**. Any significant deviation from the Council's preferred route would have to be achieved by means of an application by the affected landowner or tenant at their expense. Similarly, any structures for stock control would have to be authorised by the Council¹⁷ and paid for by the affected landowner or tenant.

5. Paths obstructed by ploughing and crops

The Council's **Ploughing and Cropping Policy** deals with all issues relating to failures to comply with Sections 134 and 137A of the Highways Act.

- 5.1. Section 134 of the Highways Act 1980 permits a farmer, under good husbandry, to plough or disturb the surface of a cross-field highway for the purposes of agriculture but only if it is not *reasonably* convenient for him *not* to plough or otherwise disturb the path.

¹⁷ Under Section 147 of the Highways Act.

- 5.2. Headland paths and byways open to all traffic (“BOATs”) are excluded from Section 134 and therefore it is an offence to disturb the surface of any headland path or BOAT.
- 5.3. Under Section 137A of the Highways Act 1980 farmers have the duty to ensure that any crop (other than grass for grazing/silage) is removed from the line and full width of a public right of way.
- 5.4. Any notice served on a farmer for a ploughing or cropping obstruction will be copied to the Rural Payments Agency.

6. Paths obstructed by vegetation other than crops

- 6.1. Paths obstructed by encroaching or overhanging vegetation other than crops - such as trees, bushes etc. - will be dealt with under Section 154 of the Highways Act 1980 and, where applicable, under the Trees section of the Council's **Maintenance Policy for Public Rights of Way**¹⁸.
- 6.2. Where any vegetation is found to overhang or encroach on a path the land owner and/or occupier will either be given a verbal and/or written notice to remove the obstruction within 14 days, or will be served directly with a formal notice under Section 154 requiring the obstruction to be removed within 14 days. The notice will include an estimate of the costs that the Council will be charging the landowner for taking the enforcement action. A contractor should be instructed to be on standby to take action on a date as soon after the 14th day as is practicable.
- 6.3. The notice or covering letter should also inform the land owner and/or occupier that if they clear the obstructing vegetation after the deadline but do not inform the area's Rights of Way Officer that they have done so, they will still be liable for any Council contractor costs.

7. Paths obstructed by material, things deposited on the highway, or structures placed across the highway

Material and Deposits

- 7.1. Paths obstructed by material - including cut vegetation and rubbish, etc - will be dealt with under Section 149 of the Highways Act 1980. The Area Officer will immediately serve written notice on the person who deposited the material (where known) requiring them to remove it within a 7 day deadline. Where the identity of the owner of the deposited material cannot be ascertained the Council will take steps to remove the material themselves.
- 7.2. If the material is not removed by the end of the 7th day the Rights of Way Team Leader will make an application to the Magistrates' Court for an order to

¹⁸ At the time of writing the Council's **Maintenance Policy for Public Rights of Way** was still being updated.

remove the material and recover all costs associated with taking enforcement action where the owner of the deposited material is known.

- 7.3. Where the Area Officer has reasonable grounds to consider that anything deposited on the highway constitutes a danger (including a danger to users or other members of the public) and ought to be removed without the delay of giving notice, they will act to remove the thing as soon as possible and will charge the appropriate person (if known) for taking enforcement action and safely disposing of the material.

Unauthorised Structures

- 7.4. Any unauthorised structures placed on a public right of way will be dealt with as below, or under Sections 2, 3, or 4 of this policy, or the Council's **Structures Policy: Achieving Least Restrictive Access on Central Bedfordshire's Rights of Way**, depending on the circumstances.
- 7.5. Where an existing authorised structure has been replaced, the new structure **must** comply to the **Structures Policy: Achieving Least Restrictive Access on Central Bedfordshire's Rights of Way** otherwise it will be deemed to be unauthorised and will be dealt with as below.
- 7.6. Where an unauthorised structure or object has been erected and obstructs a public right of way maintainable at the public expense, the Area Officer may take steps under common law to remove the obstruction as quickly as possible. Where removal costs could be recovered, the Area Officer may, under Section 143 of the 1980 Act, serve notice upon the person or organisation responsible for the structure giving them 7 days notice to remove the structure.
- 7.7. Where the structure or object has not been removed by the deadline set within the notice, the Council will, under Section 143 of the 1980 Act, remove the obstruction. The Council must allow at least one month from the date of service of the notice before exercising its power to remove the obstruction and may recover any expenses incurred in removing the structure or object from its owner.

Wilful obstruction

- 7.8. Where a person wilfully obstructs a public right of way without lawful authority or excuse and does not remove the obstruction within any notice period served upon them by the Council, the Council will seek to prosecute that person at the Magistrates' Court under Section 137 of the 1980 Act. Section 137ZA of the Act empowers the Council to remove the obstruction and recover any expenses incurred in doing so.

8. Nuisances and hazards near a highway

Firearms and gas-powered bird scarers

- 8.1. Whilst there is no specific offence of discharging a firearm on a public footpath or bridleway, it is, however, an offence under Section 161 of the Highways Act to discharge any firearm or firework within 50 feet of the centre of a carriageway (which includes restricted byways and BOATs) if any user of the highway is injured, interrupted or endangered. Use of a firearm on **any** highway could be construed as an obstruction actionable under Section 130 of the Highways Act if it prevents or deters use by members of the public.
- 8.2. Where a complaint is received, the Area Officer will contact the landowner and/or occupier to resolve the issue.
- 8.3. It is possible that use of a gas-powered bird scarer within 50 feet (15.3 metres) of a carriageway may constitute an offence under Section 161 of the Highways Act. Where a bird scarer is situated near to **any** right of way, its use may constitute a public or statutory nuisance if its operation affects the safe passage of members of the public entitled to use the right of way in question¹⁹.
- 8.4. An Area Officer responding to a complaint about bird scarers will contact the landowner and/or occupier to resolve the issue by ensuring the operator of the bird scarer adheres to the NFU's *Bird deterrents and bird scarers* guidelines.

Barbed wire

- 8.5. It is an offence²⁰ to place barbed wire adjacent to a right of way in such a position that it is likely to be injurious to members of the public or animals entitled to use the right of way. The Area Officer will contact the occupier to require them to either remove the barbed wire or to screen it with additional strands of plain wire to ensure safe passage for users within one month of being asked to do so.
- 8.6. Where a request to remove or screen barbed wire is not complied with, the Area Officer, in consultation with the Rights of Way Team Leader, will serve notice on the occupier of the land to remove the barbed wire within the time period stated in the notice (not less than one month and not more than six months).
- 8.7. Where a notice is not complied with by the deadline, the Rights of Way Team Leader will apply to the Magistrates' Court for an abatement order and then instruct Council contractors to remove the barbed wire and charge the occupier any costs incurred in securing the removal of the barbed wire.

¹⁹ *Morton -v- Weaver (Unreported)*, 31/01/1956, *Trevett -v- Lee [1955] 1 WLR 113*

²⁰ Under Section 164 of the Highways Act 1980.

Electric fencing

- 8.8. The erection of electric fencing/wire placed adjacent to a public of way such that users could be accidentally electrocuted whilst using the path is an offence under Section 165 of the Highways Act 1980. Additionally it may be construed as a public or statutory nuisance.
- 8.9. The Area Officer will contact the occupier to require them to either remove the electric fence or to screen it with additional strands of non-electrified wire to ensure safe passage for users within one month of being asked to do so.
- 8.10. Where a request to remove or screen electric fencing is not complied with, the Area Officer, in consultation with the Rights of Way Team Leader, will serve a Section 165 Notice upon the occupier requiring them to make safe the electric fencing within one month.
- 8.11. Subject to the occupier successfully appealing the notice at the Magistrates' Court, the Area Officer will, upon the expiration of the one month deadline, instruct Council contractors to remove or make safe the electric fencing and charge the occupier any costs incurred in doing so.

Bulls

- 8.12. Section 59 of the Wildlife and Countryside Act 1980 makes it an offence for the occupier of a field crossed by a public right of way to cause or allow a bull to be at large in it **unless**:
- the bull is less than 11 months old; **or**
 - is not of a recognised dairy²¹ breed and is accompanied by cows or heifers.
- 8.13. Where an Area Officer discovers, or receives a report of, a prohibited bull he should take photographs of it as soon as possible to enable positive identification of the breed and whether it is at large with cows/heifers. If satisfied that the bull is prohibited the Area Officer should contact the occupier/farmer to arrange for the removal of the bull from the field within 24 hours of being required to do so.
- 8.14. Where a request is not complied with within 72 hours, the Rights of Way Team Leader will consider whether to apply to the Magistrates' Court for an order requiring the removal of the bull from the field.

Dogs (and animals in general)

- 8.15. Where an Area Officer discovers, or receives a report of, a dog (or other animal) acting in a manner that would endanger, deter, or prevent legitimate users of a right of way from using it they should contact the owner to request that the animal be brought under sufficient control to abate the public nuisance or obstruction caused by the animal.

²¹ Dairy breeds are: Ayrshire, British Friesian, British Holstein, Dairy Shorthorn, Guernsey, Jersey, and Kerry as specified in Section 59(4) of the 1980 Act.

- 8.16. Where a request is not complied with within the timescale requested, the Rights of Way Team Leader will consider whether to apply to the Magistrates' Court for an order requiring the resolution of the issue.
- 8.17. Where a member of the public reports being harmed by an animal on a right of way this should be passed immediately on to Bedfordshire Police for them to take action.
- 8.18. In addition to constituting a public nuisance, the owner or keeper of a threatening, ferocious, or dangerous dog on, or with uncontrolled access to, a public right of way may be committing an offence under Section 28 of the Town Police Clauses Act 1847 or Section 3 of the Dangerous Dogs Act 1991. The Rights of Way Team Leader will consider whether to apply to the Magistrates' Court for an order, or ask the police to do so on the Council's behalf, to resolve the issue.

9. Encroachment onto a highway

- 9.1. An encroachment is an unlawful obstruction on a public right of way. When an encroachment has occurred, or has been alleged to have occurred, the Area Officer will investigate the matter, including establishing what the legal width of the right of way actually is, and take into consideration the degree to which passage by members of the public has been affected.

Hedges and garden wall/fences

- 9.2. If the effect on the right of way is small ("*de minimis*") the Area Officer will write to the occupier and landowner (if different) to inform them that although an illegal encroachment has occurred the Council will not be taking action to remove the obstruction unless the situation deteriorates to impede the passage of members of the public in the future.
- 9.3. If the encroachment is more significant and affects the passage of members of the public, the Area Officer will write to the occupier and landowner (if different) to require them to remove the obstruction within a period appropriate to the type of obstruction, taking all relevant matters into consideration.
- 9.4. If the encroachment has not been removed within the requested period, the Area Officer, in consultation with the Rights of Way Team Leader, will serve notice²² on the land owner and occupier using a "*Track & Trace*" service giving a deadline appropriate for the type of notice given and the structures to be removed.
- 9.5. Where the requirements of a notice are not complied with the Area Officer, in consultation will the Rights of Way Team Leader, will instruct Council contractors to remove the obstruction. Alternatively, the Rights of Way Team Leader will initiate proceedings at the Magistrates' Court for an order to remove the obstruction and to recover any costs incurred in doing so.

²² Using Sections 130, 137, 143, or 149 of the Highways Act as appropriate.

Buildings

- 9.6. Where new buildings are being constructed over, or would otherwise interfere with a right of way, the Area Officer will talk to the person in charge of the works and require them to cease all work with immediate effect and for the surface of the right of way to be restored to an acceptable standard for the class of right of way. The Area Officer will confirm this requirement by serving a notice under Section 143 of the Highways Act 1980 upon the person or organisation responsible for the building, giving them at least 7 days notice to remove the structure.
- 9.7. Where the obstruction has not been removed and the surface restored within the notice period the Area Officer will contact the person in charge of the works to notify them that Council contractors will be instructed to remove the obstructions one month after the expiration of the notice period and that the Council will seek to recover all the costs in doing so.
- 9.8. Alternatively, where the obstruction is substantial and the Council would incur significant enforcement costs the Rights of Way Team Leader will apply to the Magistrates' Court seeking an order to remove the obstruction and restore the right of way and to recover any costs incurred in doing so.
- 9.9. Where a building has been built across a right of way and has been in place for a number of years consideration will be given to whether a safe and suitable alternative route could be made available, see Section 2.2 above.

Other encroachments (lakes, ponds, etc.)

- 9.10. Where a new lake, pond, lagoon, reservoir, slurry pond or similar is being constructed on, or would otherwise interfere with a highway, the Area Officer will talk to the person in charge of the excavation and require them to cease all work with immediate effect and for the surface of the right of way to be restored to an acceptable standard for the class of right of way. The Area Officer will confirm this requirement in a written notice served under Section 131 of the 1980 Act upon the person or organisation responsible for the excavation, giving them 7 days notice to restore the surface of the right of way.
- 9.11. Where the surface has not been restored within the notice period the Rights of Way Team Leader will apply to the Magistrates' Court seeking an order that the obstruction be infilled and the surface of the right of way restored.
- 9.12. Where a lake or reservoir, pond or slurry lagoon has been built across a right of way and has been in place for a number of years consideration will be given to whether a safe and suitable alternative route could be made available, the effect on the local environment of taking enforcement action, and whether consent for enforcement would be required under Section 23 of the Land Drainage Act 1991.
- 9.13. Where the excavation is a drainage ditch, the Area Officer will give the person benefitting from the excavation the opportunity to fund the construction of a

culvert or bridge²³ built to the specifications and standard acceptable to the Council as an alternative to enforcement action being considered.

Section 130A Notices

- 9.14. A member of the public or an organisation, including a local town or parish council, may serve notice²⁴ on the Council under Section 130A of the 1980 Act to the effect that a public right of way is obstructed. Section 130A notices tend only to be submitted after requests for the Council to act to remove or abate an obstruction have not been acted upon.
- 9.15. A notice under Section 130A is only valid if the obstruction falls within the powers conferred by Sections 143 (structures on a highway), 149 (things deposited on a highway), or 154 (overhanging/dangerous vegetation), or by other regulations and does not comprise part of a building or other structure adapted for human habitation²⁵.
- 9.16. Prior to responding to the original complaint (Form 1) the Area Officer should visit the site, if necessary with a contractor, to establish the precise nature of the obstructions and their extent and likely duration of any works.
- 9.17. Where Form 1 is duly served on the Council for a valid obstruction, the Area Officer, in consultation with the Rights of Way Team Leader, will:
- Write to every person named in the notice and any other person who is responsible for the obstruction within one month of receipt of the notice using “Form 2”²⁶ to confirm whether the obstruction falls to be dealt with under Section 130A and, if so, what action, if any, the Council intends to take to abate the obstruction and by when.
 - Respond within one month of receipt of the notice to the person who served it using “Form 3” to confirm whether the obstruction falls to be dealt with under Section 130A and, if so what action, if any, the Council intends to take to abate the obstruction and by when and provide details of those people contacted above.
- 9.18. Forms 2 and 3 should be served either by hand²⁷ or posted using a “*Track & Trace*” service.
- 9.19. The identity of the complainant and recipient of Form 3 must be kept confidential and should not be disclosed to the parties obstructing the right of way.

²³ Providing that Internal Drainage Board consent can be granted for the structure and that the person benefitting from the ditch pays for the consent licence.

²⁴ “Form 1” as prescribed in the Removal of Obstructions from Highways (Notices etc.) (England) Regulations 2004 S.I. 2004 No. 370.

²⁵ Section 130A(3) and (4).

²⁶ As per S.I. 2004 No. 370.

²⁷ Notices served by hand must be done so in accordance with Council **Lone Working** and **Violence and Aggression Policy** guidelines

- 9.20. The Council has a limited degree of discretion²⁸ as to how it deals with an obstruction to a public right of way. Each notice will be dealt with on a case by case basis in consultation with the Rights of Way Team Leader. The presumption shall be that the legal line of the right of way will be reopened to its full width and with a suitable surface and that the cost of doing so will be borne solely by the obstructor. The taking of enforcement action will be in accordance with this policy.
- 9.21. The timescale for removing any obstruction should be appropriate to the type of obstruction and should take into account contractor availability, ground conditions, and nesting birds, where possible. Where possible, the obstruction should be removed within two months from the date of receipt of Form 1.
- 9.22. Any delay beyond this time must be clearly explained to the complainant as it leaves the Council susceptible to an application to the Magistrates' Court requiring the Council to act to remove the obstruction.
- 9.23. However, if the Rights of Way Team Leader considers that an alternative route exists which is either as convenient, or more convenient and enjoyable for members of the public to use than the obstructed route, the person responsible for the obstruction will be invited to apply for an immediate diversion onto the alternative route identified. Such an application must comply with all the requirements detailed in Section 3 above and in the Council's **Applications Policy**²⁹ and must primarily benefit the public users of the path. The obstructor will be liable for all the costs involved. If the obstructor declines to apply for a diversion, then enforcement action would be taken to open up the legal line of the right of way in accordance with this policy.
- 9.24. Where the obstructor agrees to a diversion, the Area Officer must explain to the person who served the original complaint (Form 1) on the Council why it has decided not to comply with the Section 130A notice.

10. Surfacing issues

- 10.1. Where the owner or occupier of the land encloses by means of walls, fences or hedges a previously unenclosed public right of way without the written consent of the Council the owner or occupier will become liable for its maintenance at common law³⁰. When the surface of an enclosed highway degrades to impede passage the owner or occupier will be required to take such actions as deemed necessary by the Area Officer to repair the surface at the owner's or occupier's expense.

²⁸ As considered within the case of *R v Surrey County Council ex parte Send Parish Council* 1979.

²⁹ Including the making available of an alternative route on a permissive basis.

³⁰ *Ratione clausurae* ("by reason of enclosure") – Halsbury's Laws of England (2004) Vol. 21 Para.266

- 10.2. Where the Area Officer consents in writing to the enclosure of a public right of way, no liability for the maintenance of the way, up to any standard required by the Council, will be conveyed onto the person carrying out the enclosure³¹.
- 10.3. Where works disturbing the surface of a public right of way have been undertaken without lawful authority and/or without the consent of the Area Officer, the officer will take photographs of the damaged path. The Area Officer will, in consultation with the Rights of Way Team Leader, serve notice under Sections 131 or 131A of the Highways Act 1980 on the occupier or person having carried out the works, requiring the surface of the right of way to be reinstated to an acceptable standard within seven days. Notice should be served either by hand³² or posted using a “*Track & Trace*” service. The notice must include a plan showing the route of the right of way and the width to be reinstated, and a request that the person carrying out the reinstatement telephone or e-mail the officer to report that reinstatement has been completed.
- 10.4. Where a notice for reinstatement has not been complied with the officer should contact the occupier or person responsible to establish if there is a reason why reinstatement could not be carried out within the deadline given; for example: adverse weather, or machinery failure. If the reason is acceptable then a short extension of up to 10 working days may be given.
- 10.5. If contact cannot be reasonably made, or if the reason given is unacceptable, or the reinstatement has not been carried out satisfactorily by the expiration of any extension period then the Rights of Way Team Leader will apply to the Magistrates’ Court for an order under Sections 131 or 131A seeking the repair and/or reinstatement of the right of way and the recovery of any costs incurred.
- 10.6. Where a Court Order is not complied with within the specified period the Council will instruct its own contractors to enter on to the property to reinstate the damaged right of way. The officer should prepare plans of the path to be reinstated.
- 10.7. The officer should try to inform the occupier that a Council contractor will enter their land to reinstate the right of way and that all reasonable costs will be charged to the occupier, or person responsible for damaging the path if different. The officer should accompany the Council’s contractor on-site to carry out the reinstatement works. If the occupier has made known his intention to prevent access or to intimidate the contractor a request that the Police attend should be considered. If the path has been reinstated when the Council’s contractor arrives but the Council has not been contacted as requested, any Council contractor or surveying costs will be charged to the occupier or person responsible.

³¹ Section 51 of the Highways Act 1980.

³² Notices served by hand must be done so in accordance with Council **Lone Working** and **Violence and Aggression Policy** guidelines

Section 56 notices

- 10.8. Where a member of the public or an organisation serves a notice on the Council under Section 56 of the 1980 Act to the effect that a path or bridge is maintainable at the public expense and is out of repair, the Area Officer, in consultation with the Rights of Way Team Leader, will:
- Acknowledge the complaint within two working days.
 - Establish whether the path or bridge is publicly maintained and, if it is, visit the location which is the subject of the complaint within five working days, if necessary taking with them a suitable qualified council officer or contractor.
 - Respond within one month of receipt of the notice to the person who served it to confirm whether the path or bridge is a right of way maintainable at the public expense and whether it is indeed out of repair.
 - If the path or bridge is maintainable at the public expense and is out of repair the Area Officer should also specify what action the Council will take to repair the right of way or bridge and state when in the next six months the works are due to be completed.
- 10.9. Where a bridge is in disrepair, the Area Officer should consider whether an emergency and/or temporary closure is required to prevent any danger to the public.

11. Unauthorised and misleading notices

- 11.1. Where an Area Officer receives a complaint about, or discovers an unauthorised, misleading or inappropriate sign on or near a public right of way they will take a photograph of the sign.
- 11.2. An unauthorised sign may be any sign, picture or notice attached to any structure or feature within the right of way or upon its surface which has not been duly authorised by the Council as Highway Authority. The Area Officer may remove any such sign forthwith³³. Having done so the officer will contact the occupier of the land on which the sign is located to inform them what has happened.
- 11.3. Alternatively, the Area Officer may contact the occupier to request that the sign or notice be removed within a specified period not exceeding 14 days. The occupier should be informed that if the notice is not removed, Council contractors will be instructed to remove the sign and the occupier will be charged the full cost of the removal. In addition, the Rights of Way Team Leader may apply to the Magistrates' Court for a prosecution under Section 132 of the 1980 Act.
- 11.4. A misleading sign or notice may be a sign containing any false or misleading information likely to deter or prevent members of the public from using a public right of way. Such signs could include signs such as "*Warning*,

³³ Where any such sign warns of a potential hazard to users of the right of way, the Officer should contact the occupier prior to removal to establish the risk to members of the public.

dangerous dog” or “*Bull in field*” signs³⁴ when the animals in question cannot access the land crossed by the path or way; or signs that may impose restrictions which are incompatible with the enjoyment of the public right (e.g. “*No cycling*” sign on a bridleway).

- 11.5. The Area Officer will contact the occupier of the land on which the misleading sign or notice is located to require him to remove it within a specified period not exceeding 14 days. The occupier should be informed that if the sign or notice is not removed by the date specified the Council may apply to the Magistrates’ Court for a removal order under Section 57 of the National Parks and Access to the Countryside Act 1949³⁵.
- 11.6. Where the misleading sign or notice is not removed the Rights of Way Team Leader will decide if the Council should proceed with a prosecution. If so, the occupier will be informed that the Council intends to prosecute and will be served papers and notice of a court date as appropriate.

12. Costs relating to enforcement action

- 12.1. In the case of any enforcement action where the legislation³⁶ permits the Council to recover reasonable costs, those costs will be recovered to the fullest extent possible.
- 12.2. Costs which are recoverable by the Council include, but are not limited to the following:

Issue	Indicative charge
Area Officer time involved in relation to investigating and carrying out any action	£43 per officer hour
Mileage rate for site inspections	45p per mile
Cost of a survey to establish the legal line of a right of way, if required	At cost – possibly £200 - £500
Cost of a Council contractor to attend a site visit and to carry out required works	At cost
Legal Services costs in relation to Magistrates’ Court	£76 per hour
Cost of a barrister for prosecution	At cost – possibly over £1000

- 12.3. The above charging rates are subject to periodic revision and are correct as of March 2012.
- 12.4. Where an Area Officer discovers an issue which may result in enforcement action being taken, the officer should record all their time and mileage on that issue as well as any time spent consulting with colleagues or legal advisors.

³⁴ See Sections 8.12 to 8.18.

³⁵ As amended by the Countryside and Rights of Way Act 2000

³⁶ Principally sections within: the Highways Act 1980, the National Parks and Access to the Countryside Act 1949, and the Countryside and Rights of Way Act 2000.

12.5. Where costs are incurred during enforcement action these will be processed by the Council's debt recovery team using its established procedures³⁷.

13. Complaints and Mediation

- 13.1. The Council's general complaints policy applies to situations where the Council or its officers have failed to provide a service. The decision to resolve a complaint about an obstructed right of way by seeking to either extinguish or divert the path, rather than remove the obstruction does not necessarily constitute a failure of service. The taking of enforcement action against the wishes of the owner or occupier of land upon which there is an obstruction will similarly not constitute a failure of service.
- 13.2. If the person seeking the removal of an obstruction, or the owner or occupier of land on which there is an obstruction thinks that their case has been unjustly prejudiced and that the Council should have acted differently then they may either apply to the Local Government Ombudsman or to the Crown Court.

The Local Government Ombudsman

PO Box 4771

Coventry

CV4 0EH

Tel: 0300 061 0614

Fax: 024 7682 0001

E-mail: advice@lgo.org.uk,

³⁷ An invoice will be sent out initially with reminders at 28 and 42 days. If payment is not received following the deadline set in the second reminder the Council will either pass the debt on to a debt collection agency or will seek a County Court Judgment and court order. A Land Charge could also be lodged against the property.

Contact us...

Për Informacion Per Informazione Za Informacije ਜਾਣਕਾਰੀ ਲਈ برای اطلاع
المعلومات معلومات کے لئی তথ্যের জন্য Za Informacija

by telephone: 0300 300 8000

by email: customer.services@centralbedfordshire.gov.uk

on the web: www.centralbedfordshire.gov.uk

Write to Central Bedfordshire Council, Priory House,
Monks Walk, Chicksands, Shefford, Bedfordshire SG17 5TQ