



North Somerset Council Enforcement Policy For Public Rights Of Way

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1. Why do we enforce

The goal of the enforcement policy is to deliver a network of public rights of way that is open and useable by the public. This will help to achieve the corporate aims, particularly the two mentioned below, and it will also fulfil the statutory duty of North Somerset Council to protect the rights of the public to use the network.

The enforcement policy and its implementation are an important part of the management of the public rights of way network and contribute to the corporate aim of 'enhancing health and wellbeing'. The public rights of way network are available to all and free at the point of use and so is part of the corporate priority to promote healthy and active lifestyles and reduce health inequalities.

The management of the public rights of way network also contributes to the corporate aim of 'protecting and improving the environment' as the network forms an important part of the environment and provides access to it. The management of the network is also part of the corporate priority to 'increase the quality of our natural and built environment'.

Section 130 of the Highways Act 1980 outlines the duty of a local authority to its network of public rights of way. "It is the duty of 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". "... it is the duty of...a highway authority to prevent, as far as possible, the stopping up or obstruction of ... the highways". Stopping up here refers to physical stopping up. The aim of the enforcement policy is to keep the network open and usable.

2. What do we enforce - Priorities

There are many obstructions on the PROW network in the North Somerset area. The full extent would only be revealed by a comprehensive survey. The May and November 5% BVPI survey in 2004 revealed 45 obstructions. This figure does not include obstructions by crops. This gives an estimate of 900 obstructions, excluding crops, on a network of 827 kilometres.

The authority has a duty to remove all obstructions as part of its duty to assert and protect the rights of the public to use the network. It is important that landowners and occupiers are aware that the authority will undertake its duty on all public paths, that none are excluded.

Nevertheless, the scale of the task means that priorities must be set. Priority will be given in the following situations:

- Where the obstruction causes a health and safety risk.
- Where the obstruction acts as a significant barrier to groups of people who are underrepresented users of the network (for example: the disabled, particular age groups, particular ethnic groups).
- Where resolution of the obstruction significantly enhances the PROW network.
- Where resolution of the obstruction contributes to other Council objectives.
- Where the problem affects a promoted route.
- Where complaints have been received from a variety of independent sources.
- Where the obstruction is caused by ploughing or crops.

Other obstructions will be dealt with in chronological order, based on the date on which they are brought to the authority's attention.

3. Where do we Enforce

The obligation of the authority is to all the public rights of way in its area. The Definitive Map records 827 kilometres of public rights of way, which consists of 704 kilometres of public footpath, 85 kilometres of public bridleway, 37 kilometres of Restricted Byway and 1 kilometre of Byway Open to All Traffic. In addition, there are an unknown number of unrecorded public rights of way.

There are instances where a landowner would prefer to deal with an obstruction by applying for an order to divert the route. Where an obstruction is neither recent nor deliberate, provided that a full application has been made, and provided that officers consider that the application is within the terms of the legislation and will be successful, no formal action will be taken. The landowner will be advised that the route should be open until the Order is confirmed. If the Order fails, consideration will be given to formal action on the obstruction.

A number of claims have been made that paths should be recorded on the Definitive Map at a higher status. These claims will be determined by the Modification Order process and any necessary formal enforcement action on these routes will be taken on the basis of the status shown on the Definitive Map.

The furniture on public rights of way can be shown to be legitimate if it is recorded in the Definitive Statement or if it has been authorised by the highway authority as being necessary for stock control. There are incomplete records in the North Somerset area and the absence of evidence that a particular item of furniture is legitimate will not itself justify enforcement action. However, if there is evidence that an item is illegal, this would form the basis for enforcement action. Each case will be decided individually.

4. How do we Enforce

Informal procedures. Complaints are logged in chronological order on a register. The complaints are then investigated by an officer who visits the site, notes the details and, usually, takes photographs.

The person responsible for the obstruction, usually the landowner, is identified. The PROW section holds records for many of the larger landholdings. Unless these listings or informal contacts, such as Parish Councils, can provide contact details, it is necessary to make a search at the Land Registry.

If it appears to the authority that there is an obstruction, this is recorded and an informal approach is usually made to the person responsible either by phone, by letter or in person. The officer making this informal approach will make a clear distinction between legal obligations and recommendations on good practice. If this informal approach results in agreement to resolve the problem a further site visit is made when an officer is in the area.

If a second site visit reveals that the problem has not been resolved, a formal notice requiring action may be served or the case may be passed to the legal section who will consider issuing prosecution proceedings.

Formal procedures will be considered if a second site visit reveals that the problem has not been resolved. The second site visit will be not less than two weeks from informal contact. If the problem is a recurring one or if informal contact has already been made at an earlier date, formal procedures may be instigated without informal negotiation.

The most common formal procedure will be the service of a notice requiring the necessary action to open the path. Failure to comply with the notice allows the authority to arrange for the necessary works to be carried out and for the offender to be recharged.

It is important that the costs of works are recovered even if this requires court action for a smaller amount than would normally be pursued. Failure to recover costs would benefit those who fail to comply with the notice when compared with those who do comply with the notice. Costs will be pursued in order to discourage those inclined to ignore the formal notice.

Prosecution of offenders will also be considered in appropriate instances. The authority will invite those involved to an interview, but will not be able to require attendance. Interviews will be conducted following the procedures in the Police and Criminal Evidence Act. Prosecutions will be considered in light of relevant parts of the Code of Practice for the Crown Prosecution Service. Considerations include:

- Does the evidence provide a realistic prospect of conviction?
- Is the prosecution in the public interest?

Each of the following factors would justify consideration of prosecution:

- a significant risk to safety
- a flagrant breach of the law
- a previous warning of legal proceedings
- a failure to heed advice or take remedial action
- a history of infringements by the defendant

5. The single payment scheme

The new single payment scheme that provides payments to land managers requires compliance with 'Good Agricultural and Environmental Conditions' (GAEC) standards. GAEC 8 is concerned with public rights of way and states that the surface must not be unlawfully disturbed, that the way must not be obstructed and that furniture must be kept in good condition.

The Rural Payments Agency, who administer the payment scheme, have asked highway authorities to refer to them instances where a land manager does not comply with GAEC standards and have provided a form with which to make a referral. North Somerset Council will usually notify the Rural Payments Agency (RPA) at the point where a notice is served or when prosecution is being considered. Where there is a long standing or repeated obstruction or other offence, the RPA may be notified at an earlier stage. The National Farmers' Union (NFU), the Country Land and Business Association (CLA) and the Parish Council will be notified at the same time as the Rural Payments Agency.

6. Principles

There are four basic principles, which should underlie the implementation of the policy. These are:

1. Proportionality - relating the enforcement action to the seriousness of the breach. Some incidents have the potential to place the public's health and safety at risk, others interfere with people's enjoyment and rights and the ability of the service to carry out its activities. Enforcement action will be proportionate to the risks posed and to the seriousness of any breach of the law. An informal approach will always be considered before formal action is taken.
2. Consistency - taking a similar approach in similar circumstances. This does not necessarily mean uniformity of action. When assessing a breach Officers will need to exercise their professional discretion taking into account all the relevant factors of the case. Such relevant factors might include the seriousness of the breach, the impact or potential impact on the public, the attitude of those responsible for the breach and the history of previous breaches.
3. Transparency - ensures that those against whom enforcement action is taken are aware of the legislative requirements and aware of the likely consequences of non-compliance. Distinction will need to be made between statutory requirements and what is good practice or desirable but not compulsory. Unless urgent action is required, an opportunity will usually be provided to discuss what is necessary to comply with the law.
4. Targeting - ensuring that enforcement action is directed primarily to where the risks or impact on the public is greatest. Action will be focused on those directly responsible for the breach and who are best placed to control it. Prioritisation will be based on a number of factors – see 2 'What Do We Enforce – Priorities'.

7. Impact of enforcement / Lack of enforcement.

The immediate impact of the implementation of the enforcement policy will be to open the network for use by the public at particular sites. As the awareness of the policy and its implementation spreads, the number of obstructions will decrease as those responsible clear obstructions before action is taken. In this way, the enforcement policy will contribute both directly and indirectly to the achievement of an open network.

The difficulty caused by obstructions is greater for impaired people and the benefit from the removal of obstructions is correspondingly greater. The enforcement policy will give a priority to

meeting the needs of disabled people where they encounter difficulties with obstructions – see Section 2. The policy seeks to meet the requirements of the Disability Discrimination Acts of 1995 and 2005. These oblige the Council to review the provision of services to meet the changing needs of disabled people.

The Countryside and Rights of Way Act 2000 introduced provisions that allow those aggrieved by an obstruction to serve notice on the Highway Authority. The complainant can appeal to the court if they are dissatisfied with the response from the authority. This procedure can be used in an attempt to gain priority for obstructions that are important to an individual or group, but would not be given priority when considered as part of the management of the network as a whole, in line with the priorities outlined in Section 2.

The existence of the enforcement policy and the record of its implementation will act as a defence to an application to the court for a direction to give undue priority to a particular problem. The court may decline to make a direction if it is satisfied “that, under arrangements which have been made by the authority, its removal will be secured within a reasonable time, having regard to the number and seriousness of obstructions in respect of which they have such a duty”.

The enforcement policy and its implementation will form part of a defence against any application for a direction from the court. This is important if the path network is to be managed in an agreed and consistent manner, rather than being subject to individual applications prompted by a variety of motives.

The absence of an enforcement policy would lead to either the sporadic clearance or neglect of obstructions by North Somerset Council and this neglect would set a bad example to those responsible for the management of the land over which the paths run.

8. What is excluded from this policy

The enforcement policy will not deal with maintenance issues. North Somerset Council is responsible for the surface of public rights of way and for signage and will respond to information received without reference to the enforcement policy.

The aim of the enforcement policy is an open and useable network for the public. Other problems, such as the misuse of public rights of way, for example by motorcyclists, or dog fouling are not the subject of this policy. Illegal motorcycle use will be referred to the police and dog fouling to the Dog Warden.

The enforcement policy will not provide an alternative means of objecting to a planning application. Objections or comments should be made in the normal way and should make reference to the affected public right of way. If the proposed development affects a public right of way, the Town and Country Planning Act 1990 makes provision for a diversion or extinguishment order. Consultations over an order allow for consideration of the effect of the development on the public right of way.

The enforcement policy will be applied in line with the priorities described in section 2 above. Situations that cause obstructions on the network can also be symptomatic of other problems. The public rights of way enforcement policy will be applied so as to secure an open network and not in pursuit of other goals.

9. Implementation

The enforcement policy is subject to the North Somerset Council procedures on the development of policies and takes account of the advice and resolutions of the Local Access Forum.

Details of the consultations are set out in appendix 4.

The policy will be taken to the Planning and Regulatory Committee and the Executive Member for approval. The Planning and Regulatory Committee includes all the members of the Public Rights of Way Sub Committee.

The Policy will take effect when it is approved by the Planning and Regulatory Committee and will be reviewed, and if necessary revised, when the code of practice to accompany the Regulatory Reform Act is published – this is expected in early 2007.

The public rights of way section undertakes work to ensure that the network remains open and available for use, as described under ‘informal procedures’ in section 4. This policy underpins that work and makes clear that formal enforcement action will follow where an informal approach has not achieved the desired result.

10. Policy Summary

Policy EP1 North Somerset Council will take the necessary action to ensure that the entire public rights of way network is open and available for use.

Policy EP2 Obstructions will be dealt with in order of priority, as detailed in Section 2 of this document.

Policy EP3 An application to divert a public right of way around an obstruction will be considered where certain conditions are fulfilled, as described in Section 3 of this document.

Policy EP4 An attempt will usually be made to resolve problems through negotiation. Formal procedures, including service of notice, prosecution and notification of the Rural Payments Agency, will be used where necessary, as detailed in Section 4 of this document.

Lead Officer: Team Leader – Public Rights of Way

Appendix 1 – Corporate issues

Community Safety. Section 17 of the Crime and Disorder Act 1998 requires the local authority “to do all that it can to prevent...crime”. The public rights of way enforcement policy will address the offences committed on the network and so prevent crime. However, the policy does not directly contribute to the four main priorities of the Safer Communities Strategy: drugs, alcohol, anti-social behaviour, reassurance and participation.

The Clean Neighbourhood and Environment Act 2005 raises the profile and importance of environmental quality in the context of the development of crime and disorder strategies and dealing with Anti-Social Behaviour. Local Crime and Disorder Reduction Partnerships are required to take into account anti-social behaviour affecting the local environment when developing crime and disorder reduction strategies.

Equalities. The public rights of way network is free at the point of use to all regardless of colour, culture, ethnic origin, nationality, religious belief, disability or age. An initial Equality Impact Assessment has been undertaken on the Environmental Management function (including public rights of way) and will be developed further. The design of path furniture was highlighted as an

important issue. The enforcement policy will result in an open network which is also especially important for the less agile.

Human Rights. At all stages when considering enforcement action, the Council will take full account of the Human Rights Act 1988.

Sustainable Communities. The UK Sustainable Development Strategy in part defines a sustainable community as “environmentally sensitive”, as enabling “a lifestyle that minimises negative environmental impact and enhances positive impacts (e.g. by creating opportunities for walking and cycling, and reducing noise pollution and dependence on cars)” and in part as “well connected” with “facilities to encourage safe local walking and cycling”. The public rights of way enforcement policy will contribute to the availability of the network and so contribute to a sustainable community.

Joint Local Transport Plan. This plan includes strategies for encouraging more walking and cycling, both of which depend on rights of way. An open rights of way network is important in encouraging their use for many different journey types. Walking and cycling are encouraged as an alternative to car use, especially for short journeys. As a result they can reduce congestion, improve air quality, improve accessibility and road safety as well as benefit the health of individuals. The JLTP recognises the role of the local rights of way network in developing an integrated transport network offering sustainable travel opportunities for walkers, disabled people, horse riders and cyclists. The Rights of Way Improvement Plan is being developed in parallel to identify improvements and address barriers to access.

Children and Young People. The priorities identified in the North Somerset Council draft ‘Single Plan for Children and Young People’ include the “promotion of healthy lifestyles” and “to encourage walking and cycling” and “to encourage greater participation in sports and leisure opportunities”. The public rights of way enforcement policy, as part of the management of the network, ensures that it is available for all, free at the point of use, and so encourages walking, riding and cycling by children and young people along with the rest of the population.

Risk Management. The public rights of way section has a range of risk assessments that cover the various areas of work. This policy is itself the subject of a risk assessment, outlined below.

Risk. The existence of situations that are a danger or a nuisance to the public.

Impact of Risk. The likelihood and severity will vary and can be significant. Injury, litigation and bad publicity could result.

Risk Control Measure. Successful enforcement action will remove the risk. General awareness that enforcement action will be taken will reduce the risk.

Risk. Obstructions can be particularly difficult for the disabled.

Impact of Risk. The exclusion of the disabled from the network.

Risk Control Measure. Successful enforcement action will provide a comparable standard of service for disabled people.

Risk. The lowering of Best Value Performance Indicator 178 (which measures the ease of use of the network).

Impact of Risk. The lowering of the indicator will result from the continued absence of enforcement. This will affect the Corporate Performance Assessment.

Risk Control Measure. Successful enforcement will increase the BVPI and improve the reputation of NSC in accordance with the Service Standards.

Risk. An increase in complaints and service of formal notice under section 130 of the Highways Act 1980 requiring NSC to remove obstructions.

Impact of Risk. Complaints and notices will use resources that could be better devoted to planned enforcement.

Risk Control Measure. The consistent application of this enforcement policy and the keeping of proper records will allow NSC to manage the network more effectively and increase usage.

Risk. Involvement in lengthy legal proceedings.

Impact of Risk. This would absorb resources.

Risk Control Measure. This policy and the associated procedures will minimise unnecessary expense.

Risk. Landowners are antagonised.

Impact of Risk. This is likely in a minority of cases and might lead to complaints against NSC.

Risk Control Measures. Consultation, particularly with the National Farmers' Union and the Country Land and Business Association (CLA), will lead to a wider acceptance of the policy.

Risk. Enforcement action, particularly vegetation clearance, may be constrained by wildlife protection.

Impact of Risk. In some instances, this may result in the route being obstructed for a while.

Risk Control Measure. Record keeping will allow the timely management of problem sites.

Appendix 2 Relevant Sections of the Highways Act 1980

The Highways Act 1980 creates a number of specific offences; some of the more common offences are listed below.

Section 131 and 131A	- Unlawful surface disturbance.
Section 132	- Unauthorised signs.
Section 134	- Interference by ploughing.
Section 136	- Damage by tree excluding sun or wind.
Section 137	- Wilful obstruction.
Section 137A	- Interference by crop other than grass.
Section 141	- Removal of trees.
Section 143	- Obstruction by structure.
Section 146	- Broken stile/gate.
Section 148	- Deposits.
Section 149	- Material deposited on highway.
Section 154	- Overhanging vegetation.
Section 154	- Dangerous tree adjoining PROW.
Section 162	- Placing rope across a highway.
Section 164	- Barbed wire causing nuisance.

The Council delegates the authority to take action to the Director of Development and the Environment. The Director will further delegate authority to the Group Manager of Streets and Open Spaces to make day by day decisions.

Appendix 3 Benchmarking

North Somerset

Population of 200,000.

827 km of recorded network.

Estimated 144 reported obstructions.

No notices served.

No prosecutions.

19 section 130 notices served on Highway Authority per annum.

Priorities see Section 2 above.

Publicity and Liaison with North Somerset Local Access Forum, National Farmers Union, Ramblers Association.

Member of Staff equates to 0.3 of a full time employee.

Bath and North East Somerset

Population of 170,000.

820 km (not including Bath) of recorded network.

Estimated 245 reported obstructions.

2 notices served per annum.

One prosecution per annum.

No section 130 notices served on Highway Authority per annum.

Priorities as North Somerset.

Publicity and Liaison with Joint Local Access Forum, Service Newsletter.

Member of Staff equates to 0.5 of a full time employee.

South Gloucester

Population of 250,000.

1250 km of recorded network.

Estimated 360 reported obstructions.

12 notices served per annum.

No prosecution per annum.

12 section 130 notices served on Highway Authority per annum.

Priorities as North Somerset but also s130 notices and PC complaints.

Publicity and Liaison with Joint Local Access Forum, leaflets, website, liaison group, National Farmers Union.

Member of Staff equates to 1.55 of a full time employee.

Appendix 4 Consultations

The following organisations have been consulted:

North Somerset Councillors

North Somerset Local Access Forum

North Somerset Parish Councils

The Ramblers' Association

British Horse Society

Open Spaces Society

Cyclists Touring Club

Byways and Bridleways Trust

British Driving Society

Auto-Cycle Union

The Disabled Ramblers' Association

Country Land and Business Association (CLA)

National Farmers' Union

Bristol City Council

Bath and North East Somerset Council

South Gloucestershire Council

Somerset County Council

Mendip Area of Outstanding Natural Beauty

Clevedon Civic Society

Cheddar Valley Railway Society

Abbots Leigh Civic Society

The Mendip Society

The Ramblers' Association – North Somerset (Northern Area)
The Ramblers' Association – North Somerset (Southern Area)
Yatton Ramblers
Congresbury Footpath Group
Gordano Footpath Group
Avon and Somerset Police
Rural Payments Agency
Countryside Agency
Forest of Avon
Avon Wildlife Trust
Wessex Water Authority
West Mendip Internal Drainage Board
North Somerset Drainage Board
Woodland Trust
National Trust
Fountain Forestry
Forestry Commission
British Telecom

Appendix 5 Frequently asked questions

1. If there is a good practical reason, can part of a public right of way be used temporarily for private purposes?

The public have a right of passage over the whole width of a public right of way at all times. A temporary obstruction of part of the width is an offence, unless there is authority for the obstruction.

2. Can a new stile or gate be erected on a public right of way?

A new stile or gate can only be erected with the consent of the highway authority for the purposes of stock control. Contact the public rights of way section for details.

3. Does planning permission give authority to change the route of a public right of way?

Planning permission does not itself give authority to alter a public right of way. A public path order must be made before any changes on the ground.

4. Can a public right of way be ploughed?

A cross field path may be ploughed where it is not reasonably convenient to avoid ploughing, but must be re-instated within fourteen days. Any further disturbance must be re-instated within twenty four hours. A field edge path should never be ploughed.

5. Who is responsible when crops or trees encroach on a public right of way?

The landowner is responsible for encroaching vegetation and the highway authority has powers to ensure that the paths are open and useable.

6. If a public right of way is obstructed, can I remove the obstruction or use an alternative route?

Property must be respected, even where it is obstructing a public right of way. There is a common law right to remove as much of the obstruction as is necessary to pass and also a right to use land in the same ownership to pass around an obstruction.