

West Berkshire District Council Environment Department

Enforcement Procedure for Public Rights of Way

- procedure and timescales for dealing with interferences with the public rights of way network

Purpose and context

The purpose of this procedure is to set out the procedures and timescales governing the actions West Berkshire District Council (WBDC) aims to take when dealing with interferences to the public rights of way (PROW) network.

Information on West Berkshire Council's statutory duties, and obligations of third parties and landowners, is set out in the following separate procedure/information sheets:

- *Ploughing and cropping*
- *Overhanging vegetation*
- *Obstructions*
- *Electric fences*
- *Responsibilities of the Council and third parties*

In addition, WBDC has three formally-adopted policies relevant to this area:

- The Management of Damage of WBDC's rights of way by vehicular use.
- Residential / land access along public rights of way - West Berkshire District Council's policy for dealing with repairs.
- Highways Act 1980 & Town and Country Planning Act 1990. Statement of priorities for dealing with proposals to amend the public rights of way network (PPOs).

Background to this procedure

The PROW network in West Berkshire comprises Public Footpaths, Bridleways, Restricted Byways, and Byways Open to All Traffic. It is around 1100km in length, and WBDC has a duty to keep the network open for public use at all times.

The overall responsibility of WBDC is summarised by S.130 of the Highways Act 1980:

130 Protection of public rights.

(1)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, including any roadside waste which forms part of it.

The network is periodically surveyed, and we also receive reports from the public and stakeholders. Examples of the types of unauthorised interference with the network which may be reported are obstructions, encroachments, misleading signs, other deterrents to use, illegal use, and surface damage.

Procedure for dealing with known instances of unauthorised interferences

STEP 1: recording and prioritisation

Once the report is received, it is logged on the internal West Berkshire Council CAMS ('Countryside Access Management System') database. Problems logged on this database are termed 'issues'.

An initial site inspection will often be required to help to ascertain the priority of the issue.

The issue is assigned a priority of low, medium or high, according to an assessment of factors and weightings in the following matrix:

PUBLIC RIGHTS OF WAY MAINTENANCE AND ENFORCEMENT

PROW Priority Matrix Calculator Spedsheet

Add your ratings for each parameter in this column

	Factor	Circumstances which would produce a score of 0	Circumstances which would produce a score of 5	Score for your path	Multiplier
1	Danger level along used route	N/A - remove danger within 24 hours	N/A - remove danger within 24 hours		
2	Usage level. Note: if a WBDC promoted route, apply an automatic multiplier of 4	Not used	Very well used		4
3	Degree of obstruction of/ deterrent to use of Definitive line	No obstruction	Completely obstructed		3
4	Benefit to general public once resolved	No benefit	Great benefit		3
5	Cost/time effectiveness in resolving	Major works on little-used path / poor evidence for enforcement action	Minor works on little-used path/ good evidence for enforcement action		1
6	Level of complaint	Minor problem noted by staff member or a survey / very low number of complaints	Many complaints received and/or representation from Parish Council		3
7	Potential for deterioration	Unlikely to deteriorate	Rapid deterioration / could be stopped by prompt action		1
Score of 45 or over: high priority / 44 -25: medium priority/ 24 and under: low priority.				Total with Multiplier	

STEP 2: defining actions and timescales

Types of action:

Where enforcement measures are required, the PROW team will, depending on priority and past record of the offender, seek the resolution by a range of measures:

- A. Offering advice and requesting resolution within a defined timescale.
- B. Serving legal notices.
- C. Direct action.
- D. Formal caution and/ or prosecution.
- E. Procedure for permanent obstructions.

A. Offering advice and requesting resolution within a defined timescale

The normal procedure is as follows:

- to make first contact, explaining the offence, and requesting resolution of the problem.
- to send a follow-up contact if no response, or if it has become necessary to stipulate a time period for resolution. The contact stipulating a timescale for resolution will state that the matter will be passed to the legal department should the problem not be resolved within the requested time period.

B. Legal Notices

A legal Notice is served when the offender does not comply with the request for resolution within the stipulated time scale.

The Notice will require a resolution within the time period as set out in the relevant legislation for the particular problem in question. For S.143 Highways Act 1980 Notices (obstructions), at least a month is given from the date of service. For Notices under S. 154 (trees, shrubs and hedges), at least 14 days is given, from service of the Notice. The Notice period for reinstatement of, or removal of a crop obstruction from, a cross field path under Schedule 12A of the Highways Act can be as little as 24 hours.

If the problem still remains after expiration of the time period, then WBDC will carry out the work itself and charge the costs to the offender.

C. Direct action

Where a problem is an immediate danger to the public, WBDC reserves the right to remove that obstruction without delay and without notice under its common law duty to “seek, remove and prevent obstructions” (Bagshaw vs. Buxton Local Board of Health (1875)). In certain other circumstances use of this power may be the most effective way of dealing with a particular problem.

D. Prosecution

At all points in the enforcement process, records and notes to be kept in case of possible decision to prosecute either for the current or future offences.

When considering either a conditional caution, prosecution or written warning, WBDC will take into account:

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- lack of co-operation;
- any record of repeat offending;
- the seriousness of the offence.

E. Permanent obstructions

The PROW Team is a consultee to planning applications affecting PROWs, and therefore the instances of permanent obstructions, e.g. buildings, on PROWs should be rare. If such instances arise, the policy **Highways Act 1980 & Town and Country Planning Act 1990 - Statement of priorities for dealing with proposals to amend the public rights of way network (PPOs)** sets out the considerations to be made:

*Diversion and extinguishment applications will only be accepted and processed where they are **in the interests of the public**, and the statutory criteria have been met. Examples of situations where applications may be accepted are:*

- a) *There is imminent danger to the path users where other remedial health and safety action is not appropriate.*

- b) *The path is blocked by long-term obstruction due to permanent buildings or other substantial development.*
- c) *The application would materially and significantly increase path users' enjoyment (for example by providing significantly improved views/opportunities to observe wildlife/to avoid permanent water-logging).*
- d) *There is a serious long-term deterrent to path users which has not been possible to overcome through clear signing, way marking and other management measures.*
- e) *The application would result in an improvement which has been recognized as a priority within the emerging Rights of Way Improvement Plan and/or an improvement of the network will be provided by the provision of an important link not provided by the existing path.*

Timescales:

<i>Priority</i>	<i>Inspect</i>	<i>Make first contact with responsible party</i>	<i>Resolution (if no legal notice required)</i>	<i>Other action</i>
<i>Safety hazard or threat</i>			<i>Within 5 days</i>	<i>Resolve the immediate safety issue within a working day, this might mean signage and fencing off a hazard, or closing the right of way.</i>
<i>High</i>	<i>3 weeks</i>	<i>3 weeks of inspection</i>	<i>3 months after inspection</i>	
<i>Medium</i>	<i>5 weeks</i>	<i>5 weeks of inspection</i>	<i>9 months after inspection</i>	
<i>Low</i>	<i>8 weeks</i>			<i>Log on database and monitor the priority. Responsible party may be contacted, to bring the offence to their attention, stating that action may be taken in the future.</i>
<i>Ploughing and cropping surface disturbance of footpaths or bridleways.</i>			<i>After cultivation, path surface must be made good to at least the minimum width within 14 days of the first disturbance or 24 hours after a second or subsequent disturbance.</i>	
<i>Permanent obstructions</i>			<i>Diversion to be considered, in accordance with the Statement of Priorities for path orders. Timescale governed by priority and resources for processing diversion applications.</i>	
<i>Legal Notice required</i>			<i>Time extended by period to be stipulated on the Notice, plus</i>	

			<i>necessary officer time for preparation.</i>	
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STEP 3 – review

All outstanding CAMS enforcement issue priorities are reviewed every 6 months. A report on progress of outstanding cases is presented to the Portfolio member every 6 months.

Exceptions – using economies of scale

Some categories of issue can be dealt with individually as set out above, and/ or with a more strategic approach in order to use economies of scale.

Some examples of where a strategic approach might be of benefit are as follows:

Illegal vehicular use: there is a project underway at Bucklebury Common, involving temporary traffic regulation orders, monitoring, policing, and maintenance works. Such a strategic view is often the best approach to these problems.

Stiles and Gates: reported problems can often be dealt with as part of a more strategic plan to improve accessibility in an area, or on a particular right of way.

Equestrian gates: there is a project to improve equestrian gates, which has been dealt with via surveys of all known issues a plan of improvements.

Overhanging vegetation (where landowner is responsible): letters are sent twice a year to remind landowners of various responsibilities, including the cutting of their hedges where adjacent to PROWs.

Ploughing and Cropping: letters are sent twice a year to remind landowners of various responsibilities, including ploughing and cropping. The PROW Team may inform the Rural Payments Agency and Natural England of offences who may carry out their own inspection. This could affect agricultural payments received.

Important: where there is a safety hazard or threat, this factor overrides other any general or strategic approaches which might be underway.

Conduct

The Government's **Enforcement Concordat*** is to form the basis for general enforcement work on PROWs.

<https://publications.parliament.uk/pa/ld199899/ldselect/lddereg/111/11107.htm>

The **Code for Crown Prosecutors** is to be the policy basis for decisions to prosecute all criminal matters.

These allow the Council to demonstrate its commitment to openness and fairness, whilst providing consistency, not only between decisions taken by the Council, but also with other enforcement bodies such as the Police.

***Enforcement concordat**

The Principles of Good Enforcement: Policy and Procedures

Standards

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

Openness

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

Helpfulness

We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice /information from us. Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

Complaints about service

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Proportionality

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

Consistency

We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Co-Ordinating Body on Food and Trading Standards (LACOTS) and the Local Authority National Type Approval Confederation (LANTAC).

Principles of Good Enforcement: Procedures

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).