

Dorset Local Access Forum

Dorset County Council



Date of meeting	8 October 2010
Officer	Director for Environment, Dorset County Council
Subject of report	A Public Rights of Way Enforcement Policy for Dorset
Executive summary	This report considers the principles behind an enforcement policy, also its scope and how enforcement should be prioritised.
Impact Assessment:	<p>Equalities Impact Assessment:</p> <p>An Equalities Impact Assessment is not a material consideration.</p>
	<p>Use of Evidence:</p> <p>Any relevant evidence provided has been considered in the preparation of this report.</p>
	<p>Budget/risk implications:</p> <p>Application of a robust enforcement policy may have short-term resource implications for the service. However, if the expected deterrent effect comes about, savings should be realised in the long-term.</p>
Recommendation	It is recommended that the Local Access Forum support a suitably worded Enforcement Policy for Public Rights of Way.
Reason for Recommendation	Setting out in a policy document the approach the Council will take on rights of way enforcement issues will provide clarity for officers, the public and landowners about what event might result in enforcement action being taken and what the process

	will be.
Appendices	Appendix 1 Draft Dorset County Council Policy Statement
Background Papers	None
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1 Background

There 3,500 miles of Public Rights of Way in Dorset made up of Public Footpaths, Public Bridleways Restricted Byways and Byways Open to All Traffic. The Council is under a statutory duty imposed under section 130 of the Highways Act 1980 to “assert and protect the rights of the public to the use and enjoyment of”, and “prevent so far as possible, the unauthorised stopping up or obstruction of” all these public rights of way.

The aim is to ensure that all public rights of way remain in a condition that is safe and easy for use by the public. The Council carries out practical works to maintain them. When enforcement problems occur it will use a mix of advice, persuasion, direct action and/or prosecution proceedings to resolve them.

To avoid the occurrence of enforcement problems the Council will give advice, practical assistance and guidance to help landowners and occupiers comply with the law. It will also provide information and advice to all those who use or wish to use the public rights of way network in Dorset.

Enforcement action is the general term used in this document to cover the range of options including negotiation and advice, direct action by the Council to remove obstructions and the taking of other legal action up to and including prosecution.

2 Law

The principle enforcement duties of Dorset County Council (the Highway Authority) include:

Section 130 of the Highways Act 1980 requires the Highway Authority to assert and protect the rights of the public to the use and enjoyment of, and to prevent so far as possible, the unauthorised stopping up or obstruction of, all these all their highways.

Section 134 of the Highways Act 1980 places a statutory duty on the Highway Authority to enforce the restoration of footpaths and bridleways lawfully ploughed or disturbed.

Section 131 A of the Highways Act 1980 places a statutory duty on the Highway Authority to take action if the ploughing or disturbance of a highway is unlawful.

Section 137 A of the Highways Act 1980 places a statutory duty on the Highway Authority to enforce the duty of an occupier to ensure that crops do not inconvenience users of footpaths, bridleways and unmetalled carriageways.

Section 57 of the National Parks and Access to the Countryside Act 1949 requires the Highway Authority to prosecute anyone responsible for a misleading notice on or near a footpath, bridleway or restricted byway shown on a definitive map.

Dorset County Council also has various powers the effect of which is to keep rights of way clear and convenient for public use.

3 Principles

There are four basic principles that underlie this policy. These are:

- **Enforcement by legal action will be proportionate** - 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 Service's ability to carry out its activities. Enforcement action will be proportionate to the risks posed and to the seriousness of any breach of the law.
- **The policy will be applied consistently** - taking a similar approach in similar circumstances. This does not 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.
- **Enforcement will be transparent and a last resort** - ensuring that those against whom enforcement action is taken are aware of the legislative requirements and aware of the likely consequences of non-compliance. A distinction will need to be made between statutory requirements and what is good practice or desirable but not compulsory. Transparency of process and providing clear guidance about what is required should aid compliance with statutory requirements and minimise the need for further enforcement action. It also helps maintain public confidence in the ability of the service to fulfil its duties. Where enforcement action is required an explanation will be given of why that action is necessary and when it must be carried out. Unless urgent action is required, an opportunity will be provided to discuss what is necessary to comply with the law.
- **Enforcement action will be targeted** – ensuring that it 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 including assessment of risk, impact on the public and complaints from the public.

At all stages when considering enforcement action the Council will consider fully the provisions of the Human Rights Act 1998.

4 Scope of the Policy

Enforcement will be considered wherever appropriate statutory powers exist to deal with actions or inactions that may lead to risks to the health and safety of the public or to their rights being infringed. The main areas to which this Policy applies are listed below.

- Obstruction or unauthorised stopping up of the public right of way
- Restoration of public rights of way lawfully ploughed but not reinstated
- Unlawful ploughing or disturbance of the public right of way
- Crops inconveniencing use of the public right of way

- Unlawful deposit of materials or structures in the public right of way
- Misleading notices on or near to a public right of way
- Vegetation overhanging a public right of way
- Barbed wire likely to cause a nuisance to users of a public right of way
- Inadequate or unauthorised stiles and gates on public rights of way

Other nuisances, obstructions and offences will be dealt with in a comparable manner according to the circumstances of the case.

5 Courses of Action

There are several possible courses of action available to the Council depending upon the nature of the offence.

- **To Give Advice** - Advice may be given when it is considered that the infringement is of a minor nature and the Council is confident the owner or occupier involved will take the required corrective action. The owner or occupier will be requested to take appropriate remedial action within a given time period depending upon the circumstances of the case.
- **Enforcement Notices** - A formal Notice may be served if an offence has been committed and where a request to take remedial action has failed. Such Notice will include provision for the Council to take direct action to remove obstructions or nuisances or to deal with the appropriate restoration of paths and to recover its costs.
- **Caution** - A formal Caution may be used where there is evidence of an offence having been committed and the person responsible for the offence has admitted to it. Where a formal caution is issued the offender will be required to sign the caution. As it entails an admission of guilt by the person responsible, it is used only where prosecution proceedings would otherwise be appropriate. A record of the caution will be held on file, and may be referred to if the person is convicted of a further offence at a later date.
- **Prosecution** - In some circumstances the Council will prosecute if it believes it to be in the public interest to do so and this may be undertaken in tandem with the service of Notices (as above). Certain offences require the service of a Notice, before an application can be made to the Magistrates Court for an order to remedy the problem.

Whilst the Council would normally commence enforcement action by giving advice and only escalate to a more severe course of action if that was unsuccessful, it reserves the right to issue an Enforcement Notice or instigate prosecution proceedings immediately where it is appropriate to do so. This may be considered justified if the breach was particularly serious or the offender had a history of similar offences.

Prosecutions are normally a last resort but remain an important part of the enforcement process. In cases where there is sufficient evidence the Council will prosecute suspected offenders if there are grounds for believing that the offence is likely to be continued or repeated and where it is appropriate to deter others.

Each case is considered on its merits taking into account all the circumstances and in accordance with the Code of Practice for the Crown Prosecution Service. Prosecution may be considered more appropriate when one or more of the following applies:

- There is a significant risk to public safety
- There is a flagrant breach of the law, or if notice had been given that legal proceedings will be considered for future breaches.
- There has been a failure to heed advice or instructions or take corrective action.
- There is a history of infringements by the defendant.

6 Additional Considerations

- Is the prosecution in the public interest?
- Does the evidence provide a realistic prospect of conviction?
- Is a conviction likely to result in a significant fine or other penalty?
- Is the Offence widespread within the Council area?

Each case will be subjected to an ongoing process of review to ensure the level of enforcement action continues to be appropriate. Once the Council decides to prosecute, it will proceed without undue delay.

Persistent breaches by landowners in agri-environment schemes will be reported to the Rural Payments Agency and their payments may be affected.

7 Prioritising Enforcement Work

There are a significant number of unresolved obstructions to the PROW network. Whilst only a small number seriously affect the public's enjoyment of the network, it is important that all these issues are addressed so that users and landowners / occupiers have certainty about the extent of the public's rights. Consequently, it is necessary that a system of prioritising the enforcement work of the PROW Team is operated.

Non-seasonal obstructions (those not related to the cultivation of arable crops) coming to the attention of the PROW Team are categorised as follows:

In some cases, as time passes it becomes progressively more difficult to secure the removal of an obstruction. Officers retain discretion to deal with "new" obstructions immediately, regardless of the above prioritisation, where it is considered effective use of resources. This applies to all seasonal obstructions. Alternatively, "new" obstructions may be placed at the top of the "Routine Obstructions List" where that is more appropriate.

PRIORITY OBSTRUCTIONS	Obstructions where one or more of the criteria set out in Policy EP2 are met. These obstructions will be dealt with as a matter of urgency by the PROW Team.
ROUTINE OBSTRUCTIONS	Obstructions which do not meet the criteria set out in Policy EP2 but which nonetheless may have a negative impact on the public trying to use the path. These obstructions will be added to a "Routine Obstructions" list and dealt with in chronological order of receipt as and when resources allow.
DE MINIMIS OBSTRUCTIONS	Obstructions which appear negligible in their impact on the public. These will be recorded on file but no further specific action proposed. Resolution of the issue will be sought if an opportunity arises, for instance if the obstructed path is identified on a search in the process of the sale of the surrounding land or if development is proposed for the affected land.

8 Use of Public Path Orders (PPOs)

A number of obstructions on PROW may be longstanding and of such a nature that successful enforcement action may be costly or difficult to achieve. An example of this might be where buildings had been constructed over a PROW some years ago.

In such cases the making of a PPO (e.g. a diversion order to circumvent or avoid the obstruction) may be a more appropriate and efficient response.

Nonetheless, to act as an effective deterrent an enforcement policy must avoid the danger of appearing to condone obstructing a PROW merely because it would be awkward or difficult to take direct action or prosecute. Consequently, the making of PPOs to deal with obstructions on PROW would be acceptable only in certain limited circumstances.

In cases where a PPO is considered acceptable normal PPO procedures will be applied including provisions for the recovery of the Council's costs. In the event of the application being unsuccessful for any reason then the case will be dealt with as a standard enforcement issue.

9 Conclusions

The considerations raised in this report will inform the enforcement process. Application of a robust Policy will clarify for all concerned where responsibilities lie for care and protection of the public's access rights and what the consequence of infringement will be.

Miles Butler

Director for Environment

September 2010