

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

Enforcement Policy – Highways (Including Public Rights of Way)

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To draw up a comprehensive enforcement policy concerning (1) public rights of way and (2) all other highways.

2. BACKGROUND INFORMATION

- 2.1 North Lincolnshire Council is the highway authority for North Lincolnshire. The Highways Act 1980 is the primary legislation with respect to the preservation of highways. The highway authority has responsibility under the Highways Act 1980 for asserting and protecting the public's use and enjoyment of all highways in its area, including public rights of way.
- 2.2 The Public Rights of Way Enforcement Policy was approved by Planning Committee on 11 March 2005 (Minute Number 681). This relates to public footpaths, bridleways and BOATs but does not include all surfaced carriageways. The only strategy relating to the remaining highways was approved by the Environment and Transportation Cabinet Member on 16 October 2003 (Minute Number 22). It was entitled "Defending the Highways" and concerned all highways other than public rights of way, being "a strategy for dealing with queries and complaints to give a consistent approach throughout North Lincolnshire".
- 2.3 The purpose of this report is to set out for members, officers and the public alike a policy relating to the highway authority's principal duties and powers and how these are applied. Since a highway is a highway whether a public right of way or a carriageway such as the A1077, it is considered that the same policy should cover all .

3. OPTIONS FOR CONSIDERATION

- 3.1 To adopt a comprehensive policy covering all highways.
- 3.2 To continue operating the PROW policy only.

4. ANALYSIS OF OPTIONS

- 4.1 A highway is a linear route over which the public are entitled to travel as a means of getting from one place to another. These range from surfaced carriageways to the humble footpath (not to be confused with *footway* i.e. a pavement at the side of a carriageway). This is why the key legislation, the Highways Act 1980, covers all categories. Furthermore, unlike in 2003 and 2005 when the existing policies were instituted, since April 2007 all highways have been the responsibility of but one service directorate: Highways and Planning. Before then public rights of way fell within a separate service. Possibly had all highways been managed by the same department in 2003, there would not have been separate policies in the first place.
- 4.2 It was intended that the PROW policy should create greater transparency in terms of what the public and elected members should expect from the highway authority. Although it is hoped that the policy has achieved this, it is deficient in so far as it does not extend to all surfaced carriageways.
- 4.3 The Council has a duty under section 130 of the Highways Act 1980 to assert and protect the rights of the public to the use and enjoyment of *all* highways. It is considered that the existing strategy is out of date and insufficient to plug the gap left by the shortfall in the PROW policy.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 5.1 Financial
 - 5.1.1 From within existing budgets.
- 5.2 Staffing
 - 5.2.1 From within existing complements.
- 5.3 Property
 - 5.3.1 None.
- 5.4 IT
 - 5.4.1 None.

6 OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17-CRIME AND DISORDER, RISK AND OTHER)

- 6.1 Statutory

6.1.1 Though not a statutory requirement, having a policy on highway enforcement is good practice.

6.2 Environmental

6.2.1 None.

6.3 Diversity

6.3.1 None.

6.4 Section-17 Crime and Disorder

6.4.1 None.

6.5 Risk

6.5.1 Non-compliance with a statutory duty is non-feasance. It attracts bad publicity, censure from government, the media, the public, user groups and so on. The local government ombudsman could intervene and action could be taken through the courts to force compliance.

6.5.2 An enforcement policy demonstrates a seriousness on the part of the authority to behave responsibly.

6.6 Other

6.6.1 None.

7. **OUTCOMES OF CONSULTATION**

7.1 The Highways and Planning Cabinet Member noted the report at his meeting on 8 September 2008.

7.2 All town and parish councils were also consulted. However, only six replied: (1) Crowle Town Council (who thought that the policy was already covered by legislation); (2) Keadby with Althorpe Parish Council (“do not disagree with anything [in the report]”); (3) Owston Ferry Parish Council (who thought that the proposed plan of action should be shared with the complainant); (4) Roxby cum Risby Parish Council (“no specific comments”); and (5) West Halton Parish Council and (6) Winteringham Parish Council (both councils thinking it was a good document but having no comments to make).

7.3 The legislation might cover all that the highway authority are required to do in terms of highway enforcement. But the public, on whose behalf we act, are in nearly all cases unlikely to be familiar with the Highways Act 1980. By having a policy that details what they should expect from us, we are giving them the information they need in a format that is more suitable for the layman to read.

7.4 The plan of action would be for in-house use. The complainant would be kept up to date independently of it.

8. **RECOMMENDATIONS**

8.1 It is recommended that the existing policy entitled “Defending the Highways” and the public rights of way enforcement strategy both be superseded by the new policy entitled “Enforcement Policy Highways (Including Public Rights of Way)” appended to this report.

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Background Papers used in the preparation of this report: n/a

**NORTH LINCOLNSHIRE
COUNCIL**

ENFORCEMENT POLICY

HIGHWAYS (INCLUDING

PUBLIC RIGHTS OF WAY)

ENFORCEMENT POLICY HIGHWAYS (INCLUDING PUBLIC RIGHTS OF WAY)

1. Introduction

North Lincolnshire Council's Highways and Planning Service Directorate carry out a range of duties seeking to ensure compliance with the legislation and procedures contained in the Highways Act 1980, as well as other legislation, to safeguard the highways that should be enjoyed by the residents of North Lincolnshire.

- 1.1 The purpose of this policy is to set out the approach to be taken by the Council in exercising enforcement duties to ensure that the legislation is effectively complied with and so that a consistent approach can be taken with each matter arising leading to fair and effective enforcement.

2. Approach to Enforcement

- 2.1 The purpose of enforcement is to ensure that a preventive or remedial action is taken to achieve compliance with existing legislation. However, the type of enforcement action to be taken will very much depend on the individual circumstances of each case, taking into account the risk involved and the proportionality and practicality of the situation.

3. Legal Powers and Duties

- 3.1 North Lincolnshire's highway network consists of *** (which includes a rights-of-way network consisting of approximately 265 miles of footpath, 60 miles of bridleway and four miles of byway). The highway authority, through various legislative acts, are given a wide range of powers and duties to deal with potential obstructions and nuisances that may arise or interfere with the public's use and enjoyment of the rights of way network.
- 3.2 A summary of the main powers available to the Council can be found in the Schedule to this policy. In addition the specific duties of the Council can be summarised as follows:
 - It is a 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 (Highways Act 1980 s.130 (1)).
 - A duty to prevent, as far as possible, the stopping up or obstruction of the highways for which the Council are highway authority and any other highway for which they are not highway authority, if, in their opinion, the stopping up or obstruction of that highway would be prejudicial to the interests of their area (Highways Act 1980 s.130(3)).

- A duty to prevent any unlawful encroachment on any roadside waste comprised in a highway for which they are the highway authority (Highways Act 1980 s.130(4)).
- A duty to take proper proceedings in response to representations from a town or parish council, or parish meeting, in respect of: a) an unlawful stopping-up or obstruction of a highway and b) an unlawful encroachment, unless satisfied that the representations are incorrect (Highways Act 1980 s.130(6)).
- A duty to ensure that no person who without lawful authority or excuse disturbs the surface of a footpath, bridleway or certain other highways (Highways Act 1980 s.131A).
- A duty to ensure that where a landowner ploughs or disturbs the surface of a footpath or bridleway that passes over a field or agricultural land, that the surface of the footpath is made good so that it is reasonably convenient for the exercise of a right of way (Highways Act 1980 s.134).
- A duty to ensure that a crop other than grass which is sown or planted on agricultural land does not encroach on the highway and make it inconvenient for the exercise of the public right of way (Highways Act 1980 s.137A).

4. Enforcement Options

4.1 A hierarchical approach will need to be adopted in choosing the most appropriate enforcement action, which will vary in accordance with individual circumstances.

- **Informal Action**
Informal enforcement action, such as written advice or warning, will be taken for minor breaches of the law where it is believed that the breach may be remedied within a reasonable period of time with minimal inconvenience to the public.
- **Formal Action**
Formal enforcement action, such as serving formal notices and initiating court proceedings, will be considered where the offender has been given reasonable opportunity to comply with the law and has failed to do so; or where the breach is considered to be deliberate and is causing a significant nuisance to the public.

4.2 Prioritising Offences

The sections of the Highways Act 1980 that place a duty upon the highway authority to ensure that a provision of the Act is complied with must take precedence.

Informal enforcement action will normally be the Council's preferred course of action. However, formal court action will have to be resorted to where remedying the breach informally is too difficult or proves to be impossible.

Whether an offence requires immediate attention, or indeed attention at all, will depend on which of the following categories the matter falls into (in descending order of priority for both 'Obstruction' and 'Nuisance':

- **Obstruction**
 - a) An outright obstruction, as a result of which the use of the highway by the public is rendered impossible;
 - b) A partial obstruction, as a result of which use can still be made of the highway, but only with undue difficulty, or over a reduced width along part or all of its length, or both of these things; or
 - c) A *de minimus* obstruction, meaning that the highway is affected to too a limited an extent to make taking remedial action worthwhile, or, indeed, legally admissible.

- **Nuisance**
 - a) danger meaning that users of the right of way are imperilled;
or
 - b) an annoyance, meaning that use of the right of way is rendered more awkward, or less enjoyable, or both of these things.

5 Gaps, Barriers, Gates and Stiles

The policy with respect to gaps, barriers, stiles and gates is as follows:

- new requests for the erection of barriers, stiles and gates across public rights of way be refused unless their provision can be clearly justified both in law and by necessity;
- all barriers, stiles and gates authorised by North Lincolnshire Council, but erected by others, be maintained by those responsible for their erection in a condition deemed suitable in the interests of public safety by North Lincolnshire Council;
- North Lincolnshire Council erect barriers, stiles, or gates where their provision is considered necessary in the interests of public safety and without prejudice to other users;
- North Lincolnshire Council provide, at North Lincolnshire Council's discretion and as North Lincolnshire Council's contribution to the maintenance expenses to which the landowner is legally entitled, replacement stiles and gates on public footpaths and public bridleways;
- authority to make the above decisions with respect to barriers, gates and stiles be delegated to the Service Director Highways and Planning;
- gaps be preferred to gates and gates be preferred to stiles; and
- with respect to all new gaps, gates and stiles on the public rights of way network, the relevant British Standard be applied throughout North Lincolnshire.

6 Ploughing, Cultivation and Cropping

Due to the predominantly agricultural nature of North Lincolnshire, particular attention will need to be given to ploughing, cultivation and cropping offences, which could severely and quickly disrupt the rights of way network. Regular monitoring of

this by the Council's rights of way officers will be required along with a preparedness to respond to any infringements effectively and as soon as practicable.

The following enforcement procedure shall apply:

- 6.1 A site visit will be made to identify or confirm whether or not an offence has been or is likely to be committed. It is important to build up a solid case since any case may result in prosecution.
- 6.2 In the case of a cross-field footpath or bridleway, consideration will be given as to whether or not the farmer enjoys a statutory right to plough under section 134(1) of the Highways Act 1980.
- 6.3 Consideration will also be given to: a) whether the disturbance, in the case of cross-field paths, is the first or a subsequent one within the same cropping cycle; and b) which sections of the Highways Act have been infringed. Note will be taken not only of any disturbance to the surface, but also whether the path has been indicated on the ground to its statutory minimum width (i.e. the widths given in Schedule 12A of the Highways Act 1980, unless a specific width is prescribed elsewhere).
- 6.4 Evidence, including photographs, will be collected to ascertain whether an offence has been committed.
- 6.5 The farmer will be visited to remind him of his obligation to restore a **cross-field footpath or bridleway** within the requisite period and to explain the sanctions he can expect to befall him if he fails to do so. If the offence is the unlawful disturbance of a **field-edge** path, or a cross-field path other than a footpath or bridleway (unlikely), the farmer will be allowed **three days** to restore the surface satisfactorily.
- 6.6 A formal notice of intention to carry out the necessary restoration works and reclaim costs, or to prosecute, or to do both these things, if the cross-field path is not reinstated at the expiration of the period allowed, will be sent to the farmer. If compliance is forthcoming, no further action will be taken.
- 6.7 Details of the case will be added to the database back at the office.
- 6.8 On expiry of the notice period, a second inspection will be made. This will be with another officer, for corroborative purposes. If compliance has not been made, the matter will be referred to Legal Services.

7 Conclusion

When deciding the best course of enforcement action, regard will have to be given to the guidance and policies published by the relevant statutory bodies. A prosecution will not be commenced unless there is sufficient evidence of an obstruction or nuisance.

Once a nuisance or obstruction of the highway has been identified, within a two-week period a plan of action shall be drawn up by the relevant officer, detailing the offence and the recommended course of enforcement action.

SCHEDULE

Summary of the Council's main powers under the Highways Act 1980

1. Section 131 – penalty for damaging the highway etc.
2. Section 132 – unauthorised markings on highways.
3. Section 135 – power to authorise works which may disturb a footpath or
bridleway.
4. Section 137 – penalty for wilful obstruction.
5. Section 143 – power to remove structures from highways.
6. Section 145 – powers as to gates across the highway.
7. Section 146 – duty to maintain stiles etc. on footpath and bridleways.
8. Section 147 – power to authorise erection of stiles etc. on footpath or
bridleway.
9. Section 148 – penalty for depositing things or pitching booths etc. on the
highway.
10. Section 149 – removal of things so deposited on highways as to be a
nuisance.
11. Section 154 – cutting or felling etc. of trees that overhang or are a danger to
roads or footpaths.
12. Section 161 – penalties for causing certain kinds of danger or acceptance.
13. Section 161A – danger or annoyance caused by fires lit otherwise than on
highways.
14. Section 162 – penalty for placing ropes etc. across a highway.
15. Section 164 – power to require removal of barbed wire, and
16. Section 165 – dangerous land adjoining street.