

**HERTFORDSHIRE COUNTY COUNCIL**

**ENVIRONMENT  
SCRUTINY COMMITTEE**

**TUESDAY 29 JUNE 2004 AT 10.00AM**

Agenda Item No.

**6**

**OBSTRUCTIONS ON PUBLIC RIGHTS OF WAY**

*Report of the Director of Environment*

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Executive Member: Derrick Ashley

**1. Purpose of report**

This report has been requested by Brian York who asked for " ... a report on the current level of illegal obstructions on the Public Rights of Way (PRoW) Network and how successful the County Council's policy approach has been in dealing with them .... and whether there are any emerging issues for the Authority resulting from new legislation such as the Countryside and Rights of Way (CRoW) Act 2000".

**2. Summary**

- 2.1 The County Council has a statutory duty to maintain the PRoW network free from illegal obstruction. These obstructions include "wilful" actions of an individual that prevents access, surface vegetation and overgrowth, and more complex obstructions resulting from the Town and Country Planning process.
- 2.2 The County Council prioritises action on obstruction cases in accordance with policy agreed by the Cabinet in December 2000 and adopted from 1<sup>st</sup> April 2001. Assessment criteria include public safety, the level of use and the impact on the wider network. Officers deal with obstructions through procedures described in the Good Practice Guide. The Authority is continually seeking to improve its performance in this area and this year's work programme provides for some existing resources to be redeployed towards increased enforcement activities, including the removal of obstructions.
- 2.3 Records show that at the beginning of this financial year there were 211 publicly reported illegal obstructions on the PRoW Network of over 3100 kilometres. These include for example; fences, buildings, locked gates, vehicles and machinery. The Rights of Way service has been working to remove obstructions within the overall framework of available resources and current priorities and policies.

In the last 3 years a total of 174 obstructions have been eliminated, ranging from padlocks on gates, electric and barbed wire fences, to gates, sheds, greenhouses and garden planting. These figures do not include obstructions resulting from vegetation, which is seasonal and mainly dealt with through existing routine annual maintenance programmes over these 3 years. In the meantime 197 new reports of obstructions have been received.

- 2.4 In February 2004 the Countryside & Rights of Way Act (CROW) introduced a new provision, enabling any individual to serve notice on the County Council to remove an obstruction on the network. They can also apply for a court order compelling the Authority to take action, if the obstruction has not been removed within 2 months. To date there have been 13 of these notices received by the Authority, which have started to have a consequent impact on work programmes. The use of these notices is expected to increase in the future.

### **3. Conclusion**

The Scrutiny Committee is asked how it wishes to undertake further scrutiny of this subject. This could be through:

- discussions on the day
- seeking a further report
- establishment of a topic group.

## 4. Background

4.1 The County Council as Highway Authority has a range of statutory duties with regard to the Public Rights of Way network including:

- The duty to maintain paths under sections 41 & 42 of the Highways Act 1980.
- The duty to assert and protect the rights of users under section 130(1) Highways Act 1980.
- The duty to prevent obstructions under section 130(3) Highways Act 1980 as amended by section 63 of CroW.

4.2 Illegal obstructions can be:

- “Wilful” actions of an individual that may include, for example a padlocked gate or barbed wire or electric fences strung across a path, preventing access.
- Surface vegetation that needs mowing and strimming in the summer, or fallen trees and overgrowth of scrub and hedges which need clearing, more often in the winter.
- Others, which are more complex, for example the failure of Planning Authorities to move or close a path under Town & Country Planning powers when granting planning permission for a new development. These range from whole streets of houses to individual agricultural buildings being built across or along the route of a right of way.
- Another example are old drafting errors on the Definitive Map of Public Rights of Way. Typically the line drawn on the map does not accurately reflect the line set out in the legal order that defines where it should be. In such cases the true line of the path may well have become severely obstructed as a consequence of under use.

4.3 An illegal obstruction may result in a total blockage of the path or a reduction in the usable width of the path. With the latter, access can be maintained but with a varying degree of inconvenience. Therefore the amount of work needed to resolve these issues might be considerable or relatively simple. Likewise a path that is completely obstructed tends to cause significantly more problems than one that is partially obstructed. However the legislation does not distinguish between such cases. Neither does it distinguish between an obstruction such as a building or summer vegetation which would die back naturally in autumn if left.

4.4 For example, bridleway 14 in Royston was a case of a planning authority allowing houses to be built and garden fences erected, which encroached onto the route. After several years of negotiation and legal proceedings, enforcement action removed the fences and garden areas along with sheds and greenhouses. More recently the case of Aldenham 31a involved protracted negotiation and legal action, leading to the removal of gates from the footpath.

- 4.5 Records indicate that at the beginning of this financial year there were approximately 211 publicly reported illegal obstructions on a network of over 3100 kilometres, including fences (solid wood, electric or barbed wire) and buildings. The statistics do not include items such as surface vegetation growth (including cropping and ploughing problems) or fallen trees that are usually dealt with through the annual maintenance programme although legally they can still be defined as obstructions.

## 5. Operational response to Obstructions

- 5.1 Since 2000, following a major review of the Rights of Way Service, work is undertaken in a strict priority order in accordance with the Member agreed policy that takes into account:

- Public Safety: including any danger to the users of the route.
- Level of Use: including expected use if a path is blocked. This is assessed by the physical characteristics of a route, numbers of reports from the public and whether it is a promoted route or not.
- Impact on the Wider Network: is the path a good link in the network, or a good leisure route?

This priority system allows resources to be directed towards paths that have the highest usage or represent a threat to public safety. Lower priority paths will therefore receive limited investment.

- 5.2 In order to ensure consistency the response from the Rights of Way Unit is guided by the publicly available Good Practice Guide that sets out procedures and provides the public with a clear explanation of the criteria to be used. Progress has been made in several ways:

- Using a new central database based on HERMIS to log all reports of obstructions.
- Prioritising on an annual basis all maintenance and enforcement work on the network.
- Adopting the British Standards (BS) 5709:2001 "Gaps, Gates & Stiles" for easier access to the network.
- Education, information and communication with house occupiers, landowners, developers and Planning Authorities, to spread the message and reduce the numbers of problems.

- 5.3 The combination of more efficient recording and targeted action has led, over the past 3 years to a doubling of the numbers of obstruction cases resolved, from 42 in 2001/02, to 82 in 2003/04. During the same period 197 obstructions have been reported, a growth over previous years which is itself partly attributable to improved reporting facilities for the public.

YEAR	Obstructions Resolved	New Obstructions Recorded	Total Outstanding Obstructions At Year End
2001 / 02	42	59	205
2002 / 03	50	64	219
2003 / 04	82	74	211
Totals	174	197	N/A

Obstructions resolved / reported 2001 – 2004.

## 6. Emerging issues and action.

- 6.1 For planning purposes, new obstructions reported are assumed to continue at present levels. Whilst there is expected to be a fall in some areas, new agri-environment schemes (to be introduced in 2005) are likely to lead to further cases being reported to the County Council by users, as land managers will have to comply with a stricter regime for access in order to receive financial reward.
- 6.2 As well as the actions highlighted above some staff resources within the Rights of Way Unit are being redeployed to concentrate on dealing with obstructions. This preventative and enforcement work is aimed at resolving many more of the existing obstructions including cropping and ploughing blockages which are a major contributor to the seasonal nature of 'temporary' obstructions.
- 6.3 The system of prioritisation means that a clear-up rate of 100% will not be achieved. Rather, effort and investment is concentrated on priority paths, which may mean other routes remain obstructed in the short to medium term. It is predicted that, within 3 years, the clearance of obstructions will keep pace with reported cases.

YEAR	Predicted Obstructions To Be Resolved	Predicted New Obstructions Recorded	Estimated Outstanding Obstructions
2004 / 05	95	75	191
2005 / 06	120	75	146
2006 / 07	145	75	76
Totals	360	225	N/A

Obstructions resolved / reported 2004 – 2007 prediction.

- 6.4 Under the provisions of section 63 of the Countryside & Rights of Way Act 2000, any individual is now able to serve notice on the Highway Authority to remove an obstruction (other than a house). They can also now apply for a court order, compelling the Authority to take action, if the obstruction has not been removed within 2 months of the date on which the notice was served.

- 6.5 To date the County Council has received 13 such notices, from 2 individuals, for 5 paths (12 from 1 individual). The result has been that officers have been diverted from their planned work programmes to deal with these cases at short notice. Extensive research, investigations and negotiations can be associated with this type of case before action can be taken. In one instance it was found the route on which the notice was served was not actually a definitive right of way.
- 6.6 In the future, there may be an increase in the number of section 63 notices being served on the Authority by individuals. The risks of the County Council being taken to Magistrates Court have to be weighed against the allocation of resources under the current prioritisation procedures.

## **7. Resource Implications**

- 7.1 The capacity to deal with obstructions should increase with the shift of staff resources towards enforcement. This work will be achieved within existing budgets. Additional funding for implementation of the CRoW Act has been made available to Local Authorities from Central Government. (£100,000 in this financial year for HCC) but it is not clear if money will be secured in future financial years. The £100,000 is for all elements of CRoW implementation such as Open Access, Rights of Way Improvement Plan, Local Access Forum, closure of the Definitive Map etc. and there is no specific allocation for increased demand created by the introduction of Section 63.
- 7.2 The strengthened provisions under section 63 of CRoW Act 2000 may increase pressure on current resources not only within the Environment department but also on the County Secretary. It is too early to determine or make an accurate estimate or prediction on the level of demand and subsequent resources required to deal with such notices.

## **8. Access to Service Implications**

- 8.1 The current work programme to remove a range of natural and man-made obstructions will progressively increase accessibility for all users.

## **9. Conclusions**

- 9.1 The County Council has a well-defined policy approach to the management of public rights of way that seeks to prioritise actions within agreed resources. Obstructions are dealt with in accordance with this policy.
- 9.2 Over the last 3 years the Rights of Way work programme has been directed towards this issue with some success. Progress is monitored quarterly and reported annually against targets set in the service plan and work programme of the unit.

- 9.3 This year existing staff resources will be redeployed to carry out enforcement aimed at further reducing obstructions on priority paths. This may result in a backlash for the Council in terms of increasing complaints from landowners following enforcement action against them. In the small number of more serious instances, obstructions are related to buildings or structures, which may require removal. Also in some cases the opening of a path may result in greater illegal use such as fly tipping. Therefore the consequences of enforcement actions do need careful consideration and mitigation measures put in place where appropriate.
- 9.4 The significance of the new provisions of the CROW Act 2000 is not yet known. The Highway Authority could find itself having to respond to an increasing number of notices from individuals, resulting in legal proceedings and the re-allocation of resources from agreed priorities. Any trends will be monitored and appropriate action considered.

*Background papers used by the author when compiling this report*

Highways Act 1980

Countryside and Rights of Way Act 2000