



## **PENDLE BOROUGH COUNCIL**

### **Public Rights of Way Enforcement Policy**

**January 2019**

# Public Rights Of Way Enforcement Policy

## 1. Introduction

- 1.1 There are over 600km of public rights of way within Pendle District including footpaths, bridleways and byways. These public rights of way provide the means for people to enjoy the countryside. We specially promote some of these rights of way including *The Pendle Way*.
- 1.2 As a district Council we have a statutory power under section 130 of the Highways Act 1980 to “*assert and protect the rights of the public to the use and enjoyment of any highway including any roadside waste which forms part of it*”.
- 1.3 Our aim is to ensure that all public rights of way remain in a condition that is safe and easy for people to use. But where unauthorised obstructions to the rights of way network have occurred we will take action as necessary and appropriate, to resolve them as resources allow.
- 1.4 To avoid the occurrence of enforcement problems, we will use our influence to give advice or practical assistance as appropriate to help land managers comply with the law.
- 1.5 This document gives an explanation of the relevant concepts and background and concludes with a formal statement of policy.
- 1.6 “*Enforcement Action*” is a general term used in this document to cover a range of options which include giving informal advice, as well as taking formal action in accordance with the law, which could include prosecuting an offender and securing a court order to remove an obstruction.
- 1.7 The word “*Paths*” is used throughout this document and refers to public footpaths, public bridleways, restricted byways and byways open to all traffic.

## 2. Principles

This policy is based on the principles of good enforcement. These are:

- 2.1 Standards - We will maintain a high standard of service to ensure that anyone who is the subject of enforcement action is treated courteously and fairly. We will similarly maintain a high standard of service for people who use public rights of way, and for people who have reported a problem to us.
- 2.2 Openness - We will ensure that those against whom enforcement action is taken are made aware of the legislative requirements and what action they should take to comply with the law. We will explain the consequences which they would face if they fail to take action as

required. Where possible we will give the advice verbally and confirm the details in writing.

- 2.3 Helpfulness - We will give clear explanations about why the Council is taking enforcement action and we will provide a reasonable opportunity to the person concerned to discuss the issues with us. Where in our judgement it is appropriate we may offer practical assistance to help a landowner or occupier to comply with the law.
- 2.4 Complaints about the service - We have a comprehensive complaints policy which allows anyone who is dissatisfied about any service to have their complaint heard. In the case of a person facing enforcement action, if we receive a complaint, we will provide the necessary information about our complaints policy.
- 2.5 Proportionality - Our approach will be proportionate to the risks posed and the seriousness of any breach of the law. We will take a more serious approach to obstructions which have the potential to put the public's safety or health at risk, and those which are deliberate acts to interfere with people's enjoyment and rights.
- 2.6 Consistency - We will take a similar approach in similar circumstances. This does not mean uniformity of action. When assessing a breach we will endeavour to act consistently with how we have acted in similar cases. But we will also exercise our discretion by taking into account all the relevant factors of each particular case.
- 2.7 At all stages when considering enforcement action, we will consider fully the provisions of the Human Rights Act 1998 and the Equality Act 2010.

### **3. Scope of the policy**

- 3.1 The main issues which this policy applies to are listed below.
- Obstruction or unauthorised diversion of a public right of way.
  - Unlawful deposit of materials in a public right of way.
  - Unlawful structures set up in a public right of way.
  - Misleading notices on or near a public right of way.
  - Vegetation overhanging a public right of way.
  - Unlawful disturbance of the surface of a public right of way.
  - Failure to comply with ploughing and cropping legislation.
  - Barbed wire or electric fencing likely to cause a nuisance to public rights of way users.
  - Inadequate or unauthorised stiles and gates on a public right of way.

- Other nuisances which affect public rights of way users. For example, this might include a nuisance caused by an animal which is kept on or near a public right of way.

## **4. Courses of action**

- 4.1 There are several possible courses of action available to us depending on the nature of the problem.
- 4.2 Investigation – Depending on the seriousness of the issue we will carry out an investigation. This will usually include carrying out a site visit and meeting the owner or occupier of the land in question to discuss the issue. For more serious cases the investigation may include taking witness statements or inviting a suspected offender to attend an interview under caution in accordance with the Police and Criminal Evidence Act 1984.
- 4.3 Direct action – If there is a minor infringement then we may simply deal with the problem during an initial site visit. For example, if a short section of wall has collapsed onto a path we may simply remove the stone to the adjoining land.
- 4.4 Advice – If we find that an offence has occurred then we may give advice to the land owner or occupier to prevent future infringements.
- 4.5 Informal request to take corrective action – If there is a continuing obstruction or infringement to a public right of way then we may ask the person responsible to take such steps as are reasonably required to resolve the problem. We will usually negotiate with an offender to agree the details and a date by which the corrective action should be completed, taking into account the nature of the work required.
- 4.6 Serve a statutory notice to take corrective action – If an informal request to take remedial action has failed to achieve the desired outcome then we may serve a formal notice under the relevant legislation. If the land manager fails to comply with the requirements of such a notice then the legislation will include a suitable remedy to ensure that any action necessary may be carried out such that any costs incurred by the Council may be recovered. (Most commonly statutory notices will be used to require the cutting-back of overhanging vegetation.
- 4.7 Make a final request to take corrective action – If an informal request to take remedial has been unsuccessful and there is no statutory notice which the Council may use which applies to the circumstances then we may make a final request to the offender to take action. A final request would include a warning that if the offender still failed to take action then the Council may itself take direct action to resolve the problem without further notice, and it may treat any failure to take action (or nonfeasance) as a wilful act which could result in prosecution. Most commonly this would apply to obstructions in the right of way. The Council could not recover the costs of taking direct action and therefore if the costs of taking action are likely to be excessive then the offence

would be more likely to be prosecuted due to the powers of the courts to order an offender to take corrective action.

- 4.8 Formally caution an offender – 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 it. This approach may be used where there has been a more serious breach in the legislation but in the circumstances we judge that a formal caution is more appropriate than prosecution. A caution may be used, for example, where an offender has acted on advice we have given and complied with an informal request to take corrective action following a serious breach of the law. 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 in court if the person is convicted at a later date of a further offence. If the offender decides not to sign a caution then the case should proceed by means of prosecution.
- 4.9 Prosecution – Prosecutions are normally a last resort but remain an important option within the enforcement process. In cases where there is sufficient evidence, we 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.
- 4.10 Each case is considered on its merits taking into account all the circumstances, and by making a proper assessment of evidential tests and whether a proposed prosecution would be in the public interest. This assessment is made in accordance with the Code of Practice for the Crown Prosecution Service.
- 4.11 Prosecution may be an appropriate course of action to secure the removal of an obstruction if a final request to take corrective action has not achieved this outcome. This is because a Magistrates Court has the power to order a convicted offender to remove an obstruction.
- 4.12 There are a number of particular issues which commonly affect public rights of way within Pendle. Therefore when we consider if it is in the public interest to prosecute we will give particular weighting to cases where when one or more of the following applies:
- Construction or development work with or without planning permission has been carried out which either obstructs a public right of way or causes some other nuisance to public rights of way users.
  - An alternative path for the public has been provided and the public are prevented or discouraged from using the public right of way. This is aggravated if the alternative path is less convenient than the right of way.
  - A public right of way is affected by a longstanding obstruction such as a building which cannot be easily removed, and the owners of the property have failed to cooperate with advice given to apply to formally

divert or extinguish the right of way, but where removal of the obstruction in question may be seen as being a disproportionate way to resolve the problem (See “Using Public Path Orders” below).

- 4.13 Once we decide to take enforcement action, we will proceed to the proper conclusion of the case without undue delay.
- 4.14 At any stage we may liaise with or work in partnership with Lancashire County Council to bring a case to a proper conclusion.

## **5. Prioritising enforcement work**

- 5.1 Every public rights of way issue which is reported to the Council or discovered by the Countryside Access Officer, including maintenance and enforcement issues, is prioritised in accordance with the most recent Countryside Access Strategy. However, the Council reserves the right to use its discretion to take enforcement action in any case in accordance with the policy statement at the end of this document and more particularly policy EP2.

## **6. Use of Public Path Orders (PPOs)**

- 6.1 A number of obstructions may be longstanding and of such a nature that successful enforcement action would be costly, difficult to achieve or undesirable. An example of this might be where a building had been constructed over a public right of way some years ago.
- 6.2 In such cases the making of a PPO may appear a more appropriate and efficient response. In the majority of cases this will be by means of a diversion order to circumvent or avoid the obstruction.
- 6.3 Nonetheless, to act as an effective deterrent an enforcement policy must avoid the danger of appearing to condone obstructing a public right of way merely because it would be awkward or difficult to take direct action or prosecute. Consequently, the making of PPOs to deal with obstructions on public rights of way would be acceptable only in certain limited circumstances as set out in Policy EP3.
- 6.4 In cases where a PPO is considered acceptable then normal PPO procedures will be applied including provision for the recovery of our costs. In the event of an application being unsuccessful for any reason, then the case will be dealt with by alternative means in accordance with this policy.

## **7. Enforcement on land owned by Pendle Council**

- 7.1 Where Pendle Council has a legal interest in land crossed by a public right of way, then we have the same responsibilities as anyone else to comply with the law which protects the public's rights.
- 7.2 Therefore if a problem occurs on Council owned land, or if any department of the Council is responsible for an infringement on any other land, the policy will be followed in exactly the same way as it would be for any other land owner.

- 7.3 Where formal enforcement action would normally be considered, then the Council's Countryside Access Officer will advise a Senior Council Officer in writing of the circumstances of the case for appropriate action to be taken internally, and refer the matter to Lancashire County Council for it to take any action which it considers to be appropriate.

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# **PENDLE BOROUGH COUNCIL**

## **PUBLIC RIGHTS OF WAY ENFORCEMENT POLICY STATEMENT**

### **POLICY EP1**

Wherever obstructions or other breaches of relevant legislation are identified, Pendle Borough Council will take enforcement action in accordance with this enforcement policy and this statement to remedy the problem.

### **POLICY EP2**

In dealing with enforcement issues, priority will normally be given to cases where, in the view of officers, one or more of the following criteria are met:

1. Where continuation of the infringement significantly interferes with the use of any path or poses an unacceptable health and safety risk;
2. Where the obstruction affects a strategically important route. For example public rights of way within urban areas, a promoted route<sup>1</sup>, or public rights of way in rural areas which form important links to give access in the countryside;
- 3 Where resolution of the obstruction will contribute significantly to other Council objectives;
4. Where a significant number of valid complaints have been received about the obstruction from a variety of independent sources.

### **POLICY EP3**

A Public Path Order (PPO) will be considered as an acceptable alternative to securing the removal of obstructions only where all of the following criteria are met:

1. The obstruction or obstructions do not appear to have resulted from an action or actions by the current owner or occupier.
2. The obstruction or obstructions are of a scale and nature such that there is no prospect that the person responsible could reasonably be expected to make arrangements for it or them to be removed.
3. The proposed PPO will safely fulfil the requirements of the relevant PPO legislation.

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<sup>1</sup> A self-guided walk or ride which has been publicised by means of a leaflet, book or otherwise by Pendle Council or with its support. The Pendle Way is an example of such a route.



*Nothing in this policy in any way affects the powers available to the Council to take direct action to remove unsafe or unauthorised obstructions or deposits in a public right of way.*

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