

Wrexham County Borough Council

Public Rights of Way Maintenance and Enforcement Policy

This document is available in Welsh



Introduction

There are over 850km of Public Rights of Way within Wrexham County Borough Council made up of public footpaths, bridleways 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 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, education and advice to all those who wish to use the public rights of way network in Wrexham.

The management of the Maintenance and Enforcement function of Public Rights of Way is governed on a national level primarily by the statutory legislation of the Countryside Act 1968, the Highways Act 1980, the Wildlife and Countryside Act 1981, the Countryside and Rights of Way Act 2000 and a variety of regulations, guidance and central government policies.

Prioritisation of Public Rights of Way Maintenance

The following table illustrates the category system for paths. Given resources pressures, there is a need to prioritise problems on the network by making a judgement on the severity of the fault and the category of path it occurs on. Any faults that pose a serious health and safety risk to members of the public will be treated as a high priority. Problems shall be inspected using the categories below with Priority 1 paths being the highest priority.

Priority	Description
1	Public Safety Issues Examples: any issue with potential to cause injury; dangerous bridges, bulls & other dangerous animals, dangerous structures. This category of issue will be investigated / responded to in 72 hours from receipt of complaint.
2	Obstructions and statutory duties Examples: physical obstructions which prevent the public from using a path, serious disturbance to the path surface, encroachment, misleading signs, badly overgrown vegetation and missing fingerposts. This category of issue will be investigated / responded to in 4 weeks from receipt of complaint.
3	Maintenance issues and minor compliance issues Examples: improving stiles / gates, drainage problems, surfacing improvements, waymarking. This category of issue will be investigated / responded to in 6 weeks from receipt of complaint.
4	Non – statutory requests / enquiries Examples: requests for additional signing, improvements not covered by higher priorities. This category of issue will be dealt with at the discretion of the relevant officer.

N.B The timescales given here are for an officer to look at the problem, not to issue the work to fix it or temporarily close the path. Work timescales are dependent on urgency, contractor availability and resources.

The following information outlines Wrexham County Borough Council's policy in dealing with issues including enforcement which is associated with Public Rights of Way. The Public Rights of Way team are always keen to discuss general issues or specific problems. We believe that prevention is better than cure and that our role involves actively working with both landowners and users.

Barbed Wire across a Public Right of Way

A barbed wire fence or exposed barbed wire erected across a public right of way without an adequate means of crossing is an offence. It is an obstruction to the rights of way and a nuisance and a danger to members of the public wishing to use the right of way. The Council will firstly ask the owner of the fence to remove it immediately or, if it is necessary for agriculture to provide an adequate means of crossing it on the line of the path. The latter will require authorisation by the Council as it would constitute a new structure (see stiles and gates). If the owner fails to agree to either of these courses of action, the Council will remove the barbed wire where it affects the path without further notice. If the owner continues to commit further offences of this nature, the Council will consider prosecution for obstruction.

Barbed Wire alongside a Public Right of Way

Where a barbed wire fence is situated alongside a Public Right of Way it may be a danger and a nuisance to members of the public. If in the opinion of the Council the barbed wire does represent a danger to the public, then the Council will firstly ask the owner to make the fence safe for members of the public using the path. If the owner refuses or fails to do so the Council will serve a legal notice requiring the owner to remove the source of danger within a specified time.

Bulls and Dangerous Animals

It is an offence for the occupier of land crossed by a Public Right of Way to allow a bull over 10 months old and on its own and / or any bull of a recognised dairy breed (even if accompanied by cows / heifers) to be at large on it.

Bulls which are less than 10 months old or of a recognised beef breed and at large with cows / heifers are exceptions to this rule.

If any animal, which is known to be dangerous by the keeper of the animal, causes injury to a member of the public using a Public Right of Way an offence may be committed and the occupier could be sued by the injured party.

Landowners will be notified of their obligation under the Wildlife and Countryside Act 1981 section 59, following any report.

Dangerous Land adjoining a Public Right of Way

From time to time the Council encounters unfenced dangers on adjoining land which present hazards to path users. The Council has a duty to protect path users from such dangers and will in the first instance enter into dialogue with the owner of the adjacent land to urge them to remove or adequately fence the danger. The Council can require the owner of the dangerous land to carry out the necessary works by service of notice. If the owner does not comply with the notice the Council may carry out the work and recover the costs from the owner.

Dogs on Public Rights of Way

Dogs are allowed on Public Rights of Way but they should be kept under close control at all times. There is no requirement in law for a dog to be on a lead. A path user who allows a dog to wander off the right of way becomes a trespasser and owners and occupiers have a right to ask them to leave the land. In instances where the Council has been made aware of dogs worrying livestock, dog fouling or any other issues involving dogs on public rights of way, signs will be provided to landowners. Where significant problems arise, liaison with the Council's Environmental Enforcement team will take place.

Electric Fences across a Public Right of Way

An electric fence erected across a Public Right of Way without a safe means of crossing is an offence. It is an obstruction to the right of way and a nuisance and a danger to members of the public wishing to use the right of way. The Council will firstly ask the owner of the electric fence to remove it immediately or, if it is necessary for agriculture, to provide an adequate means of crossing it on the line of the path. If the owner fails to agree to either of these courses of action the Council will remove the electric fence where it affects the path without further notice. If the owner continues to commit further offences of this nature the Council will consider prosecution for obstruction.

Electric Fences alongside a Public Right of Way

Where an electric fence runs alongside a Public Right of Way it may be a danger and a nuisance to members of the public. If in the opinion of the Council this is the case then the Council will firstly ask the owner to make the fence safe for members of the public using the path. If the owner refuses or fails to do so the Council will serve legal notice requiring the

owner to remove the source of danger within a specified time. Failure to comply with the notice will result in the Council removing the fence and recovering costs from the owner

Encroachment

An encroachment is an unlawful obstruction of the highway. When an encroachment has occurred or is alleged to have occurred, the Council is duty bound to investigate and the following action will be taken.

Consideration will be given to whether the encroachment has actually occurred and is materially affecting the way, or may do so in the future. This may require considerable research including historical research to establish the legitimate width of the highway (see width of public rights of way). If it is demonstrated to the Council's satisfaction that encroachment has occurred but is not materially affecting the path or the rights of users, the Council may regard it as de minimis. In these circumstances the Council will inform the person responsible that their actions are unlawful and any additional encroachment will result in enforcement action to remove all the encroachment.

If the Council is satisfied that the encroachment is materially affecting the right of way and the rights of users, the following approach will be taken to have it removed. Firstly, the circumstances will be brought to the attention of the person responsible and they will be asked to remove the encroachment within a reasonable time – scale to be determined by the Council. If this fails to secure the removal of the encroachment, the Council will commence enforcement action in respect of the obstruction (see obstructions).

Fences adjacent to Public Rights of Way

If a landowner wishes to enclose a public right of way with walls or fences either side, they must consult the Public Rights of Way team beforehand to ensure they are not encroaching onto the legal width of the path. A path enclosed in this fashion typically would become the maintenance responsibility of the landowner.

Hedges and Trees adjacent to Public Rights of Way

Boundary hedgerows and trees to the side of public rights of way are the responsibility of the landowner or occupier, rather than the Highway Authority. Where a hedge overhangs or obstructs a Public Right of Way, the Council has a right to remove so much of the overgrowth to prevent the obstruction to pedestrians and equestrians. Additionally, the Council has a power to require the owners of overhanging hedges to require them to lop or cut back the hedge within a period of 14 days.

Maintenance of bridges, culverts and other structures

The Council is responsible for most footbridges, but where a public footpath or bridleway crosses a bridge, over which there are private vehicular rights the landowner may also be responsible for certain maintenance and repairs. The Rail Authority, Natural Resources Wales and British Waterways retain maintenance liability for many of their structures.

Misleading Signs and Notices erected on Public Rights of Way

Misleading and unlawful signs can deter people from lawfully exercising their rights to use a path. Following a report of a misleading sign erected on a public right of way landowners will be notified of their obligation under the Highways Act 1980 and National Parks and Access to the Countryside Act 1949. The Council may request landowners to remove any misleading signs or notices. Failure to do so may result in the Council taking direct action and / or prosecution: all reasonable costs will be reclaimed where possible.

Obstructions

Where the obstruction is minor it must be removed by the owner. If the owner fails to remove the obstruction within a period of time deemed reasonable by council officers, enforcement action using powers available under section 143 of the Highways Act 1980 will be taken and the obstruction removed. The costs of the enforcement action will usually be recovered from the offender. If the offence recurs, prosecution of the offender will also be considered. The Council will only consider a request to divert the path following the removal of the obstruction.

Where the obstruction is substantial and it would be costly and impractical to remove it, the owner will be requested to apply for the diversion of the path rather than remove the obstruction. The Council will expect the owner to make an alternative route available whilst the diversion process is completed.

If the owner fails to acknowledge the problem, or does not co-operate with the Council to remedy it either by diverting the path or removing the obstruction then this failure will be given considerable weight. In these circumstances consideration will be given to prosecution and seeking a Magistrates order to remove the obstruction.

If an application to divert the path fails, then the Council would expect the original route to be made available by the owner. If the owner fails to do this then the Council would consider prosecution and seek a Magistrates' order to remove the obstruction.

Ploughing and Cropping

The Council will comply with s134 and s137A Highways Act 1980. Where a footpath or bridleway is ploughed, it must be reinstated within 14 days beginning from when the surface is first disturbed, and 24 hours for any further disturbance such as harrowing and drilling.

Where a crop (other than grass) has been planted or sown on land crossed by a public right of way and renders it inconvenient, the occupier has a duty to ensure that the line on the ground of the public right of way is indicated to not less than the minimum width. Additionally, the occupier has a duty to prevent the crop from encroaching within that width throughout the growing season.

The Council will normally take direct action to remove crops or to reinstate paths where landowners have failed in the duties imposed on them by the Highways Act 1980 s 134 and s 137A. The appropriate enforcement action contained in the Highways Act 1980 will be followed or the Council will take action under its common law powers. Consideration will be given to prosecution repeat offenders. All reasonable costs will be reclaimed.

Signposting and Waymarking

The Council will ensure that public rights of way are signed in accordance with their correct legal status where they leave metalled routes. Installation of new or replacement rights of way signposts will normally be by provision of a galvanised finger post with directional arrow and status of the right of way. The Council will provide adequate waymarking or other signage as appropriate wherever there might otherwise be difficulty in identifying the route of a path.

Stiles and Gates

Section 146 of the Highways Act 1980 places a duty on the landowner to maintain gates and stiles in a reasonable condition. The Council's current policy is however to supply and install gates and stiles on behalf of landowners. This provides the best method of improving access to the countryside by providing consistent standards of access furniture to British Standards (where this is possible).

When considering the replacement or installation of new stiles and gates the Council will seek the least restrictive option following the priority principle of gap, gate stile. The Council can provide authorisation for the erection of new gates and stiles if the structure is required for stock control purposes.

Surface

The surface of most public rights of way is vested in the County Council as Highway Authority, the landowners interest only extends to the sub soil. The Council will maintain the surface of public rights of way appropriate to their designated route category and status so that they are safe and fit for all lawful public use.

Ways over which there are private vehicular rights will receive no higher level of maintenance other than is necessary for the use which is made of the path by the public. The Council will take enforcement action in appropriate cases if the surface of a public right of way is unlawfully disturbed or damaged.

The Council is also responsible for ensuring that vegetation growing in the surface of the public right of way is kept under control and does not make the route difficult to use. The Council undertakes annual maintenance as required dependent upon the route and vegetation type.

Width of Public Rights of Way

In the absence of a width recorded in the definitive statement there is no general rule applying to the width of public rights of way and the width is a matter of fact to be determined on each occasion based upon the following. The width may be set out in an historical document or it may be the width of the way between boundaries such as hedges or fences. Alternatively the width may be that which the public have customarily enjoyed. In the absence of the foregoing, the Council will require a reasonable width to be made available which would be sufficient for two users to pass. In the case of a footpath, this can be regarded as 2 metres, in the case of a bridleway 3 metres and in the case of a byway 5 metres.

Statutory default minimum widths apply to all public rights of way but only in relation to ploughing and reinstatement following ploughing. These are as follows:

	Field edge	Cross field
Footpath	1.5m	1m
Bridleway	3m	2m
Restricted Byway and BOAT	3m	5m

Prosecutions

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.

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.

A Public Path Order will be considered as an acceptable alternative to enforcement action only where all of the following criteria are met:

1. The obstruction does not appear to have been a deliberate attempt to interfere with the public's use of the route.
2. The obstruction is not part of a recent origin.
3. In the opinion of a WCBC Public rights of way officer, an alternative route exists that will fulfil the requirements of the relevant PPO legislation.

Protection of Identity

The names and addresses of members of the public who report obstructions and other difficulties confidentially will not be revealed without the prior consent of the person concerned unless the Council is required to do so by law.