

Record of officer decision

Decision title:	Service of notice under Section 143 Highways Act 1980
Date of decision:	25 May 2019
Decision maker:	Acting Assistant Director for Highways & Transport
Authority for delegated decision:	Chief Executive Scheme of Delegation - updated October 2018. Directorate Scheme of Delegation: Economy and Place, section 69. To act on behalf of the council in respect of the legislation specified in the Highways Act 1980
Ward:	Bromyard Bringsty
Consultation:	None
Decision made:	That notice under Section 143(1) Highways Act 1980 is served on the person in control of objects set across and upon a public right of way, namely footpath LTB6 where it meets Stonehouse Lane, Bromyard, and which are causing an obstruction of that footpath, such notice requiring them to remove the objects within a time specified in the notice.
Reasons for decision:	<ul style="list-style-type: none"> • Access to the public footpath LTB6 is obstructed by what appears to be various building materials that have been placed across the path and by a number of old gates/hurdles that have been secured across it. The person who has control of the objects has been requested to remove them verbally and in writing, but has failed to do so. • Herefordshire Council (the highway authority) has a duty by virtue of Section 130 Highways Act 1980 to protect the rights of the public to the use and enjoyment of any highway and to prevent, as far as possible, the obstruction of the highway. • In line with the council's 'Overarching Enforcement and Prosecution Policy' the next incremental and proportionate enforcement action is to serve a statutory notice on the person responsible requiring them to remove the obstructions.
Highlight any associated risks/finance/legal/equality considerations:	<p>Risk – non-compliance with the requirements of the notice. This would require further consideration of the exercise of the power to carry out the works in default of the notice (and the recovery of costs which may not be paid and may result in the need for legal action), or prosecution for the substantive offence of wilful obstruction contrary to Section 137 Highways Act 1980 (and the associated costs of such action).</p> <p>Legal considerations – it is an offence under Section 137 Highways Act 1980 without lawful authority or excuse in any way to wilfully obstruct the free passage along the highway. The offence of obstruction is a continuing one.</p> <p>Herefordshire Council (the highway authority) has a duty by virtue of Section 130 Highways Act 1980 to protect the rights of the public to the use and enjoyment of any highway and to prevent, as far as possible, the obstruction of the highway.</p> <p>There are two principal options within the Highways Act to deal with an obstruction – prosecution (substantive offence under Section 137) or service of notice to remove</p>

	an unauthorized structure from the highway (under Section 143). A structure can be any 'object of such a nature as to be capable of causing an obstruction'.
Details of any alternative options considered and rejected:	<ol style="list-style-type: none"> 1. Do nothing. This option does not fulfil the council's duty under Section 130 Highways Act 1980 to protect the public's rights and prevent obstructions of the highway. 2. Prosecute alleged offender under Section 137 Highways Act 1980. This is not felt to be a proportionate next response whilst the option to serve notice is available.
Details of any declarations of interest made:	None

I am an officer delegated to make the decision

Signed:

Job Title: Acting Assistant Director Highways & Transport