

## Record of officer decision

<b>Decision title:</b>	<b>Service of notice under Section 154, Highways Act 1980 – tree/shrub growing on land adjacent to Faraday Road, Hereford</b>
<b>Date of decision:</b>	10 October 2019
<b>Decision maker:</b>	Engineering Manager
<b>Authority for delegated decision:</b>	Chief Executive Scheme of Delegation . 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.
<b>Ward:</b>	Widemarsh
<b>Consultation:</b>	None
<b>Decision made:</b>	That notice under Section 154, Highways Act 1980, is served on the occupier of land on which a tree/shrub adjacent to Faraday Road, Hereford is overhanging the footpath to an extent so as to obstruct the free passage of pedestrians, such notice to require the occupier to cut the tree/shrub so as to remove the obstruction within such time as specified in the notice.
<b>Reasons for decision:</b>	<ul style="list-style-type: none"> <li>• A garden tree/shrub adjacent to Faraday Road, Hereford is overhanging the footpath to such an extent that the free passage of pedestrians is obstructed.</li> <li>• Herefordshire Council (the highway authority) has a duty by virtue of Section 130 of the 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.</li> <li>• A letter has been sent to the occupier of the property on which the tree/shrub is growing requesting that they cut back the overgrowth, but they have not complied with the request.</li> <li>• 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 occupier of the property requiring that the tree/shrub is cut so as to remove the obstruction.</li> </ul>
<b>Highlight any associated risks/finance/legal/equality considerations:</b>	<p><b>Risks</b> – Non-compliance with requirements of notice. This would require further consideration of works in default of the notice and the recovery of costs which may require legal proceedings.</p> <p><b>Legal considerations</b> – The authority to serve a notice on the occupier is contained in Section 154, Highways Act 1980. This section states that where a hedge, tree or shrub overhangs a highway so as to endanger or obstruct the passage of vehicles or pedestrians, the highway authority may by notice either to the owner of the hedge, tree or shrub or to the occupier of the land on which it is growing, require him so to lop or cut it so as to remove the cause of the danger, obstruction or interference.</p> <p>Herefordshire Council (the highway authority) has a duty by virtue of Section 130 of the Highways Act 1980 to protect the rights of the public to the use and</p>

	enjoyment of any highway and to prevent, as far as possible, the obstruction of the highway.
<b>Details of any alternative options considered and rejected:</b>	<ol style="list-style-type: none"> <li>1. Take no further action. 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. It also means that the matter of the obstruction is not resolved.</li> <li>2. The council could instruct BBLP to cut the tree/shrub without service of notice. Whilst this option resolves the issue more quickly, the risk is not assessed as requiring this, and it relieves the occupier of the land of responsibility. The recovery of costs from the owner may also be less likely.</li> </ol>
<b>Details of any declarations of interest made:</b>	None.

Signed:

Date: 10 October 2019

**ENGINEERING MANAGER  
AUTHORISED OFFICER**

