

Record of officer decision

Decision title:	Service of notice under Section 154, Highways Act 1980 – trees/shrubs obstructing footway at Tensing Close and Hilary Drive, Hereford
Date of decision:	11 December 2019
Decision maker:	Engineering Manager
Authority for delegated decision:	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.
Ward:	Kings Acre
Consultation:	None
Decision made:	That notice under Section 154, Highways Act 1980, is served on the owner of land on which trees and shrubs are growing adjacent to Tensing Close and Hilary Drive, Hereford, and which are overhanging the footpath to an extent so as to obstruct the passage of pedestrians, such notice to require the owner to cut the trees and shrubs so as to remove the obstruction within such time as specified in the notice.
Reasons for decision:	<ul style="list-style-type: none"> • Garden trees and shrubs growing on land adjacent to a section of footpath at the junction of Tensing Close and Hilary Drive, Hereford, are overhanging the footpath to such an extent that it is obstructed. • The owner of the premises on which the trees and shrubs are growing has been contacted and requested to cut back the vegetation so as to remove the obstruction. To date the shrubs have not been cut and the footpath remains obstructed. • 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. • 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 owner requiring that the trees and shrubs are cut so as to remove the obstruction.
Highlight any associated risks/finance/legal/equality considerations:	<p>Risks – 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>Legal considerations – The authority to serve a notice on the owner 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</p>

	<p>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 enjoyment of any highway and to prevent, as far as possible, the obstruction of the highway.</p>
Details of any alternative options considered and rejected:	<ol style="list-style-type: none"> 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 obstruction, and associated risk to pedestrians, remains. 2. The council could instruct BBLP to cut the trees and shrubs without service of notice. Whilst this option resolves the issue more quickly, the risk is not assessed as requiring this, and it relieves the owner of the land of responsibility. The recovery of costs from the owner may also be less likely.
Details of any declarations of interest made:	None.

I am an officer delegated to make the decision

Signed:

Print Name: Bruce Evans

Job Title: Engineering Manager