

## Record of officer decision

<b>Decision title:</b>	Service of notice under Section 143 Highways Act 1980
<b>Date of decision:</b>	20 January 2020
<b>Decision maker:</b>	Engineering Manage
<b>Authority for delegated decision:</b>	Chief Executive Scheme of Delegation. Directorate of Economy & Place scheme of delegation, updated 14/02/19, section 69 Highways & Transport – to act on behalf of the council in respect of the legislation specified in the Highways Act 1980.
<b>Ward:</b>	Leominster South
<b>Consultation:</b>	None
<b>Decision made:</b>	That notice under Section 143 Highways Act 1980 is served on the landowner who has control of ‘structures’ causing an obstruction of footpath ZC93 in the parish of Leominster South requiring them to remove the obstruction within a time specified in the notice.
<b>Reasons for decision:</b>	<ul style="list-style-type: none"> <li>• Footpath ZC93 passes over the track known as Cockcroft Lane. At its most eastern end it is bounded to the north by the boundary hedge/fence of a residential property fronting Hereford Road. The occupier of the property has erected a new fence/hedge south of their existing boundary. Whilst the width of the footpath is not defined it is presumed to be the width of the historic Cockcroft Lane (up to approximately 3 metres). The new fence/hedge is within this width and therefore constitutes an obstruction of the footpath.</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>• The person responsible for the fence/hedge has been requested to remove it. They have failed to do so.</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 person responsible requiring them 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 or prosecution for the substantive offence of wilful obstruction contrary to Section 137, Highways Act 1980.</p> <p><b>Legal considerations</b> – 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 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> <p>There are two principal options within the Highways Act 1980 to deal with obstructions. As an act or omission contrary to Section 137 is an offence the council can instigate a prosecution. Section 143 gives the council power to serve notice to remove an unauthorized structure from the highway. A structure can be any 'object of such a nature as to be capable of causing an obstruction'.</p>
<b>Details of any alternative options considered and rejected:</b>	<ol style="list-style-type: none"> <li>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. It may also encourage further encroachment.</li> <li>2. Prosecute alleged offender under Section 137 Highways Act 1980 (wilful obstruction). This is not felt to be a proportionate response whilst the option to serve notice is available, and that may result in the removal of the obstructions.</li> </ol>

<b>Details of any declarations of interest made:</b>	None.
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I am an officer delegated to make the decision

Signed:

Printed Name: Bruce Evans

Job Title: Engineering Manager

