

Record of officer decision

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| Decision title: | Service of notice under Section 143, Highways Act 1980 |
| Date of decision: | 14 September 2020 |
| Decision maker: | Engineering Manager |
| Authority for delegated decision: | <p>Directorate scheme of delegation: updated 29 July 2020 Directorate: Economy and Place, section 75.</p> <p>To act on behalf of the council in respect of the legislation specified in the foregoing:</p> <p>Traffic Management Act 2004, Road Traffic Act 1988, Cycle Tracks Act 1984, Highways Act 1980, National Parks and Access to the Countryside Act 1948, New Roads and Street Works Act 1991, Road Traffic Regulation Act 1984, Town and Country Planning Act 1990, Town Police Clauses Act 1847, Traffic Calming Act 1992 Wildlife and Countryside Act 1981</p> |
| Ward: | Old Gore |
| Consultation: | None |
| Decision made: | That notice under section 143 Highways Act 1980 is served on the developer who has deposited a large pile of soil on top of a stile and obstructed footpath BA18 in the parish of Brampton Abbots, requiring them to remove the obstruction within a time specified in the notice |
| Reasons for decision: | <p>The developer has been asked 3 times (by email, in-person and by enforcement letter) to remove the obstruction. He has failed to do so.</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>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</p> |
| 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 or prosecution for the substantive offence of willful obstruction contrary to Section 137, Highways Act 1980.</p> <p>Legal considerations – It is an offence under Section 137, Highways Act 1980 without lawful authority or excuse in any way to willfully obstruct the free passage along the highway. The offence of obstruction is a continuing one.</p> <p>Herefordshire Council (the highways 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> |

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| | There are two principle 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' |
| Details of any alternative options considered and rejected: | <p>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.</p> <p>Prosecute alleged offender under Section 137 Highways Act 1980 (willful obstruction). This is not felt to be a proportionate response whilst the option to serve notice is available which may result in the removal of the obstructions</p> |
| Details of any declarations of interest made: | None |

Signed

Date: 14 September 2020

Bruce Evans
Engineering Manager