

Highway Enforcement Policy

Version: 1.0

Date Issue: December 2024

Review date: December 2027

Reference: Highway Enforcement Policy

Team: County Highways

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1. Introduction

The purpose of this policy is to set out how Warwickshire County Council (WCC) will prioritise enforcement action against encroachments, obstructions and unlawful interferences within the public highway in order to protect its use and enjoyment for the public.

WCC is the Highway Authority for the purposes of The Highways Act 1980 (The Act). Section 130 of The Act puts a duty upon the Highway Authority to 'assert and protect the rights of the public to the use and enjoyment of any highway for which they are the Highway Authority'. The Act contains provisions enabling the Highway Authority to deal with various encroachments, obstructions and unlawful interferences. Section 333 of The Act also permits the Highway Authority to exercise existing rights under common law to remove or reduce obstructions and nuisances.

2. Aim of this Policy

The aim of this policy is to assert and protect the rights of the public to the use and enjoyment of the highway. Additionally, it aims to ensure the safe passage of all highway users through the management of encroachments, obstructions and unlawful interferences on the highway. The policy explains the options that we will consider when undertaking enforcement, in order to promote a consistent methodology across the County.

The desired outcome is to ensure compliance through discussion and where appropriate we will explain any non-compliance and provide an opportunity for dialogue in regard to advice provided, action required or decisions taken. However, where it is not possible to make progress due to a lack of willingness on the part of the individual/organisation to work with the Council, enforcement action will be commenced in order to ensure that highway users are not put at risk.

Whilst this policy aims to be reasonably comprehensive, it is unable to cover every possible situation and the Council will therefore aim to apply the same general principles, as described in the policy, wherever appropriate.

The general principles which underpin the enforcement of encroachments, obstructions and unlawful interference on the public highway are defined as follows:

- **Proportionality** – enforcement action will be proportionate to the risk and seriousness of the breach.
- **Targeting** – we accept that sometimes enforcement resources are limited and therefore regulatory effort will first be directed towards those activities that give rise to higher levels of risk.
- **Consistency** – The use of the risk and prioritisation criteria will promote a consistent approach to enforcement.
- **Transparency** – this policy makes it clear how we make decisions about enforcement and our expectations of individuals/organisations including what they must do to ensure

compliance.

- **Accountability** – we are accountable for the enforcement decisions made and have an effective and accessible mechanism for dealing with comments and handling complaints.

3. Scope

This policy covers encroachment, obstructions or unlawful interferences within the public highway. This includes, but is not limited to, any disruption to the use of the public highway, for example:

- Vegetation overhanging the highway
- Things placed on the verge, carriageway or footway
- Instances provided for by legislation
- Encroachments, obstructions or unlawful interferences, including on a Public Right of Way

4. Dealing with Non-Compliance

When deciding on the appropriate action to take, regarding non-compliance (when considering the Highways Act, other relevant legislation or instructions from the Council), the aim of the Council is to achieve one or more of the following:

- Ensure the safe passage of all highway users.
- Act as a catalyst to change the behaviour of the non-compliant individual/organisation.
- To remove financial gain from non-compliance by an individual/organisation.
- To return the public highway to a safe condition.
- Deter future non-compliance.
- Deal firmly with those that deliberately or fail to comply.
- Where necessary refer cases of non-compliance to another enforcement body (i.e. HSE).

When making a decision on appropriate enforcement action officers will consider the circumstances of the case and history of the parties involved and will ensure that the remedial action required is proportionate to the risks created by the current or ongoing non-compliance.

Where appropriate an officer will explain the non-compliance and provide an opportunity for dialogue in regard to the advice provided, action required, or decisions taken.

Where there is a direct risk to highway users, and the responsible individual/organisation is not contactable or cannot act within a reasonable time frame to mitigate the risk, immediate action may be taken by the Council, if deemed appropriate, and the Council will seek to recover all reasonable costs for doing so.

A risk assessment will be undertaken by an investigating officer to determine the impact and probability of any encroachment, obstruction and unlawful interference before the appropriate action is taken.

The criteria which will be taken into account, when deciding on the most appropriate course of action to take in any particular situation, is detailed in the following two non-exhaustive lists:

Interference/Risk Criteria

- Amount of highway available for use by the public
- Location of temporary obstruction within the public highway
- Type of highway
- Road hierarchy (including speed limit) and footway hierarchy
- Level of footfall
- Amount of vehicular traffic
- Nature of the interference

Prioritisation Criteria

- The degree of risk arising from non-compliance
- The seriousness of the contravention
- The different technical means of remedying the situation
- The particular circumstances of the case and likelihood of its continuation or recurrence
- The general attitude of the offender to their responsibilities
- The past history of the person(s), company or premises involved
- The impact of the enforcement choice in encouraging others to comply with the law
- The likely effectiveness of the various enforcement measures
- Any legal requirements
- Any legal guidance
- Any guidance or protocols issued by any other Government Department or Agency

Risk Assessment

This assessment quantifies the impact of a risk should it occur, against the probability of the risk occurring. Both assessments are on a scale of 1-5 where 5 is the highest impact or probability.

Risk impact:

Relates to assessing the extent of damage likely to be caused should the risk become an incident:

1 = Negligible

2 = Low

3 = Moderate

4 = High

5 = Very High

Risk probability:

Assessing the probability of a risk occurring

1 = Negligible (less than a 10% chance of occurrence)

2 = Low (10-25% chance of occurrence)

3 = Noticeable (25-50% chance of occurrence)

4 = High (50-75% chance of occurrence)

5 = Almost Certain (more than a 75% chance of occurrence)

Considerations that we will take into account when making the risk assessment will include but are not limited to, the type of highway, the road/footway hierarchy, the volume of highway users, the location within the highway.

5. Enforcement Actions

Warwickshire County Council takes a balanced approach when looking to enforce against those who have encroached, obstructed or interfered with the public highway. We believe that discussion, education and close liaison are preferable to formal action and that our role involves working closely with the public to advise and assist with compliance.

When necessary, Warwickshire County Council will take enforcement action, and this will be proportionate to the interference and/or risk to the user of the highway. Warwickshire County Council do have the provision via legislation for a notice to be served to the owner/occupier of the land adjoining the defect or on any person who has caused the defect to occur.

Enforcement options available to Officers to deal with encroachments, obstructions and unlawful interferences are detailed below:

Actions Available	Details of Action
No Action	Where an investigation reveals no offence has occurred, the offender makes a ready admission of the breach and takes immediate steps to remedy it, there are strong mitigating circumstances or where there is no jurisdiction to act.
Advice/verbal warning	Where applicable advice and support will be provided on how to ensure compliance, typically following a request, planned/ad hoc inspection or complaint. A verbal warning may be issued. NB. there must be a written record of any verbal warning.

Warning Letter	Warning that recurrence or continuation of a breach could result in further and/or legal action.
Enforcement/Formal Notice	There are a range of legal powers to require persons to perform an act or desist from a practice including statutory powers to serve a Notice requiring remedial action to be taken and / or for a particular course of conduct to cease. Failure to comply with such a Notice may lead to prosecution.
Removal of items that constitute a danger	If the Council has reasonable grounds to consider anything unlawfully deposited on the highway constitutes a danger to highway users, and that the item must be removed without delay the Council has the power under Section 149 of The Highways Act 1980, to do so.
Refusal/suspension of licence and or suspend the company's registration with the Council.	Officers may determine whether to grant, suspend or revoke a licence, or suspend a company's registration with the Council based on legislative requirements and other information (e.g. continue breach of conditions).
Simple Caution	Officers may issue a simple caution if an offender admits to committing a criminal offence, there has been an interview under caution, the evidence is such that the Council has a reasonable prospect of conviction, and it is considered appropriate to take formal action. A Simple Caution may be cited in the case of any future offending.
Prosecution	The Council will consider prosecution in the Magistrates or Crown Court where there is sufficient evidence of an offence and it is in the public interest to do so. On conviction the Council will seek to recover costs incurred in bringing the prosecution.

Please note that the above list is not in escalating order, or a list of actions that the Council will take in every case, it is a non-exhaustive illustration of some of the options available to the Council.

Maximum Fines – Standard Scale (as of October 2021)

Dependant on the nature of the offence, a successful prosecution may lead to a fine or a custodial sentence being issued by the Courts.

A fine levied by the courts following prosecution must not exceed the statutory limit. Where expressed in terms of a 'level', the maxima are as follows:

Level	Maximum Fine
1	£200
2	£500
3	£1000
4	£2500
5	Unlimited (for offences committed after 13/03/15)

6. Legislation

Legislation followed for highways enforcement is detailed below, however please note that this is a non-exhaustive list:

- Highways Act 1980
- New Roads and Street Works 1991
- Traffic Management Act 2004
- Refuse Disposal (Amenity) Act 1978
- Clean Neighbourhoods Act 2005
- Environmental Protection Act 1990
- Police, Crime, Sentencing and Courts Act 2022

When investigating potential non-compliances our officers will comply with all relevant legal requirements and associated best practice guidance, including (as applicable):

- Police & Criminal Evidence Act 1984
- Criminal Procedure & Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Investigatory Powers Act 2016
- Criminal Justice & Police Act 2001
- Data Protection Act 2018
- General Data Protection Regulation

This enforcement policy has been prepared having regard to:

- Legislative & Regulatory Reform Act 2006
- Regulators' Code (April 2014)
- Regulatory Enforcement & Sanctions Act 2008
- Code for Crown Prosecutors (October 2018)

- Code of Practice for Victims of Crime (January 2024)
- Human Rights Act 1998
- Equality Act 2010
- Data Protection Act 2018
- General Data Protection Regulation
- Legislative and Regulatory Reform (Regulatory Functions) Order 2007

7. Having Your Say

We welcome comments, compliments, and complaints about our services as they are seen as an opportunity to develop and improve the way we work.

If you would like to make a comment, complaint, or challenge a regulatory decision, in the first instance please contact us by phone: 01926 412515 or email: chpolicy@warwickshire.gov.uk

8. Policy Review

From time to time between review dates minor amendments may be made to this policy in accordance with the Council’s constitution.

Version Reviewed	When reviewed	Summary of Changes Made
V1.0 - December 24	N/A	N/A