

# Highway Authority Enforcement Policy

An explanation of how we prioritise the enforcement of encroachments, obstructions and unlawful interference with the highway to protect the use and enjoyment of the highway for the public

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Essex County Council

# **HIGHWAY AUTHORITY ENFORCEMENT POLICY**

## **Essex County Council**

### **Introduction**

Essex County Council (ECC) 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, including any roadside waste which forms part of it'.

The Act contains provisions enabling the Highway Authority to deal with various encroachments, obstructions and unlawful interferences. Each provision prescribes action which the Highway Authority may take where that provision applies.

Common Law also exists to enable the Highway Authority to remove obstructions and abate nuisances, these are maintained under Section 333 of The Act.

Essex County Council are able to take proper proceedings in the exercise of this duty, and are afforded the discretion to take such steps as they deem expedient.

For enforcement relating to Public Rights of Way, please refer to the Public Rights of Way Enforcement Concordat

### **Aim**

The aim of the policy is to explain how ECC prioritises enforcement, and the actions that will be considered when undertaking enforcement.

ECC believes that people should have the right to the safe use and enjoyment of the highway. The general approach will be to educate occupiers and landowners, developers, farmers, and businesses to enable compliance.

The desired outcome is always to ensure compliance through discussions and negotiations. Where it is not possible to make progress due to lack of willingness on the part of the landowner to work with the Council, enforcement action will be commenced in order to ensure that Highway users are not put at risk.

### **Scope of Policy**

This policy is to be considered by officers where a defect (defined in this policy as meaning any encroachment, obstruction or interference with the highway) of the highway has been discovered by themselves; or where it has been reported to them

by members of the public; or by those commissioned to undertake work on the highway.

## **Enforcement Actions**

ECC takes an assessed approach when looking to enforce against those that have caused a defect on the highway within Essex. Any enforcement action will be proportionate to the interference and, or, risk to the use of the Highway. ECC will consider all of its statutory powers in any combination. The action ECC will take may range from providing advice and guidance; issuing a formal letter; serving Notices; carrying out of default action; recovery of costs for carrying out default works from the owner/occupier; or prosecution.

We believe that education and liaison are preferred to formal action and that our role therefore involves actively working to advise and assist with compliance.

Where the provision of The Act provides for a notice to be served, it usually allows for the notice to be served either on the owner/occupier of the land adjoining the defect or any other person having control of it or on any person who caused the defect to occur. The Council will consider the circumstances of each case when deciding who should be served with a notice.

## **Prioritisation**

When prioritising cases or deciding whether or not to take action ECC will take account of:

1. the characteristics of the highway,
2. the characteristics of the defect,
3. the extent to which defect significantly interferes with the use and enjoyment of the Highway by the public, and
4. the extent to which the defect poses a risk to the safety of highway users.

## **Definitions**

### **Highway**

The highway is defined as the whole or a part of a highway

### **Defect**

Means any encroachment, obstruction or interference with the highway

### **Encroachment, Obstruction or Interference**

Includes, but is not limited to, any disruption to the use of the highway, e.g:

- Vegetation overhanging the Highway
- Things placed on verges and footways
- In instances provided for by legislation, interference with light
- In instances provided for by legislation, interference with a sight line, including the blocking of signage

## **Risk**

Means the risk identified by the Highway Authority which can include reference to the Risk Evaluation Assessment (See Annex 1)

## **Significant Interference**

When deciding what constitutes significant interference, consideration will be given to the following, non-exhaustive, factors:

- Amount of highway available for the use by the public
- Location of the defect within the highway
- Type of highway
- Category of road
- Amount of footfall
- Amount of traffic
- Nature of the interference

## **Purpose of Policy**

The prioritisation criteria is designed to enable all officers to assess and prioritise defects of the highway, where it is considered the most significant interference and, or, risk is posed to the users of the Highway.

ECC believes in firm but fair regulation. Underlying the commitment to firm but fair regulation are the principles of:

- Proportionality – all enforcement action will be proportionate to the interference and, or, risk posed
- Consistency – the use of the prioritisation criteria will promote a consistency of approach to enforcement
- Transparency – this policy makes it clear how we make decisions about enforcement, and helps set the expectations of the residents of Essex
- Accountability - for the enforcement decisions made

# ANNEX 1

## Risk Evaluation Assessment

This assessment quantifies the impact of a risk should it occur, against the probability of the risk actually occurring. Both assessments are on a scale of 1-4, where 4 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 = minor or low impact
- 2 = noticeable impact
- 3 = major, high or serious impact
- 4 = extremely high or dangerous impact

**Risk probability** - assessing the probability of a risk occurring

- 1 = low probability (up to 40%)
- 2 = medium probability (41 to 60%)
- 3 = high probability (61 to 80%)
- 4 = very high probability (over 80%)

Considerations that will be taken into account when making the Risk Assessment will include, but are not limited to, the type of highway; the category of road; the amount of footfall; and the location of the defect within the highway.

This report has been prepared by  
Essex County Council Highway Authority

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