



Highway Authority Enforcement Policy

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

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1. 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 is able to take proper proceedings in the exercise of this duty, and it is afforded the discretion to take such steps as it deems expedient.

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

2. Aim

The aim of this 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 to ensure that Highway users are not put at risk.

3. Scope of Policy

This policy is to be considered by officers where a defect or observation identified by a Highway officer (defined in this policy as meaning any encroachment, obstruction, damage to the Highway or interference with the Highway) has been referred for enforcement risk evaluation and potential action, or has been discovered by themselves, or where it has been reported to them by a member of the public or by those officers commissioned to undertake work on the Highway. A proactive approach may be taken for issues where risk evaluation will increase over time, such as vegetation which can be anticipated to grow and where early intervention prevents the risk escalating.

4. Enforcement Actions

ECC takes an assessed approach when looking to enforce against those that have caused any encroachment, obstruction, damage to the Highway or interference with 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 encroachment, obstruction or interference with the Highway or any other person having control of it or on any person who caused the encroachment, obstruction or interference with the Highway. The Council will consider the circumstances of each case when deciding who should be served with a notice.

5. 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 encroachment, obstruction, damage to the Highway or interference with the Highway,
3. the extent to which the encroachment, obstruction, damage to the Highway or interference with the Highway significantly interferes with the use and enjoyment of the Highway by the public, and
4. the extent to which the encroachment, obstruction, damage to the Highway or interference with the Highway poses a risk to the safety of Highway users.
5. the availability of enforcement options available, taking account of time constraints imposed by Statutes and case law.

5.1 Additional Risks

In cases where an enforcement officer undertakes an enforcement risk evaluation, either via a desk top assessment or site visit, and identifies other risks which have not been

referred for enforcement risk evaluation, the enforcement officer may incorporate these risks into matters for enforcement consideration. These additional risks may not all be assessed as having equal priority to or higher priority than the original risk which prompted their identification, but for purpose of achieving value for money for residents, may be included for action with the original risk should action be undertaken. For those sites where there are a range of enforcement action priorities, this approach will focus on corrective action for higher priority issues while leaving lower priority issues on site to be progressed through revisits.

6. Definitions

- **Highway:** The Highway is defined as the whole or a part of a Highway.
- **Encroachment, Obstruction, damage to the Highway or Interference of the Highway:** Includes, but is not limited to, any disruption to the use of the Highway, e.g.:
 - Vegetation overhanging the Highway
 - Damage to the Highway
 - Unlawful works
 - Things placed on verges and footways
 - In instances provided for by legislation, interference with light
 - In instances provided for by legislation, interference with a sightline, including the blocking of signage
- **Risk:** Means the risk identified by the Highway Authority. The Enforcement Risk Evaluation Assessment Process is set out in Section 8 of this policy.

- **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 encroachment, obstruction or interference within the Highway
 - Type of Highway
 - Category of road
 - Amount of footfall
 - Amount of traffic
 - Nature of the interference

6.1 Definitions: Defects and Observations

- Defects or Observation identified by a Highway officer are defined in this policy as meaning any encroachment, obstruction, damage to the Highway or interference with the Highway.
- **Sites that are recorded as a Highway defect in context of Highway User Safety:** are those that following risk assessment by a Highway officer, may pose a higher risk of causing harm or damage to the public and therefore require attention within a prescribed timescale, as they represent an immediate or imminent safety hazard or because there is a risk of short-term structural deterioration to the asset. The Highway officer's assessment may lead to the defect being referred to the enforcement team for enforcement risk evaluation.
- **Sites that are recorded as an Observation in context of Highway User Safety:** are those that following risk assessment by a Highway officer, are of low risk of causing harm or damage

to the public and are therefore considered only to impact long term serviceability and sustainability of the Highway asset. The Highway officer's assessment may lead to the observation being referred to the enforcement team for enforcement risk evaluation.

Note: Defects and Observations will have equal relevance regarding matters that are referred to the enforcement team for enforcement risk evaluation.

6.2 Definitions: Enforcement Risk Evaluation

- **Enforcement Risk Evaluation:** is a risk assessment carried out by an enforcement officer, to assess the risk to the Council as Highway Authority in protecting the right of the public to the safe use and enjoyment of the Highway.
- If the matter has been referred to the enforcement team by a Highway officer who has undertaken a risk evaluation, it is likely that the risk evaluation will have been based on road user safety. The Enforcement Team will carry out a separate Risk Assessment based on the risk to the Council as Highway Authority in protecting the right of the public to the safe use and enjoyment of the Highway.
- Enforcement risk evaluation will also be carried out for matters referred to the enforcement team from other sources, including but not limited to requests for service from the public or from Councillors or matters referred by other Council departments.

7. Purpose of Policy

The prioritisation criteria are designed to enable all officers to assess and prioritise encroachment, obstruction, damage or interference with the Highway, to assess the risk 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

8. Enforcement Risk Evaluation Assessment Process

8.1 Enforcement risk evaluation

This is a risk assessment carried out by an enforcement officer, to assess the risk to the Council of the encroachment, obstruction, damage or interference within the Highway in question, in terms of the right of the public to the safe use and enjoyment of the Highway.

8.2 Assessing current level and future level of risk

Risk evaluation is an assessment of the current level of risk of the encroachment, obstruction, damage or interference within the Highway in question, as well as the future level of

risk if risk is likely to increase before corrective action can be realised, to the:

- safety of the Highway user
- inconvenience to the Highway user
- enjoyment of the Highway user
- accessibility, or availability of the Highway to the user
- immediate damage and deterioration to the Highway or longer-term impact for serviceability and sustainability of the Highway

8.3 Risk Impact and Risk Probability

This assessment quantifies the consequence should the risk incident occur because of the encroachment, obstruction, damage or interference within the Highway in question, against the probability of the incident occurring. Both assessments are on a scale of 1-5, where 5 is the highest consequence or likelihood.

Risk consequence is an assessment of the seriousness of the risk, should the risk incident occur because of the encroachment, obstruction, damage or interference within the Highway in question, scored as below.

1. Insignificant Impact
2. Minor Impact
3. Moderate Impact
4. Major Impact
5. Extreme Impact

Risk likelihood is an assessment of the likelihood of a risk incident occurring because of the encroachment, obstruction, damage or interference within the Highway in question, scored as below.

1. Rare
2. Unlikely
3. Possible
4. Likely
5. Almost Certain

The considerations relating to the Risk Assessment in terms of impact and probability will include but will not be limited to:

- the type or category of Highway
- estimated lawful use of the Highway
- location, degree and extent of encroachment, obstruction, damage or interference within the Highway.

8.4 Risk Factor Score

The risk factor score is the product of consequence score and likelihood score assessments multiplied together. This will produce a range of scores from 1 to 25. It is the risk factor score that identifies the seriousness of the risk evaluation and consequently the enforcement response to ensure as far as practicable that Highway users are not put at risk.

The Enforcement Risk Evaluation will be kept under review and can be amended at any time.

8.4.1 Enforcement Risk Matrix

		Likelihood				
		Rare (1)	Very low (2)	Low (3)	Medium (4)	High (5)
Consequence	Insignificant impact (1)	1	2	3	4	5
	Minor impact (2)	2	4	6	8	10
	Moderate impact (3)	3	6	9	12	15
	Significant impact (4)	4	8	12	16	20
	Major impact (5)	5	10	15	20	25

This information is issued by:
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