

# Public Rights of Way Enforcement Concordat



# Foreword



Through EssexWorks, Essex County Council has a programme to deliver the best quality of life in Britain and secure the future of our County. This Enforcement Concordat explains clearly the steps we will take to preserve the legal rights of Essex residents, whether they are landowners or Rights of Way users, and to preserve our Rights of Way network for the future.

## **Cllr Norman Hume**

Cabinet Member for Highways & Transportation



This Enforcement Concordat is the framework we will use to defend Public Rights of Way in Essex. The Concordat will be an invaluable part of the work to manage and develop the Public Rights of Way network for the future.

## **Paul Bird**

Director for Highways & Transportation

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# Introduction

This Concordat sets out the key elements and commitments of Public Rights of Way (PRoW) Enforcement in Essex, based upon the statutory duties, principles and objectives of Essex County Council (ECC) in its capacity as Highway Authority.

Although the Concordat is prescriptive to a substantial degree, it is also written to enable managerial discretion both by the PRoW Enforcement and Liaison Officer based at County Hall and the Area Highway Managers and their staff, thereby allowing every case to be assessed on its own merits. In doing so, the statement draws upon best practice from other Concordats, utilising the essential principles of fairness and proportionality.



# Fundamental principles

Essex County Council recognises its duty under the Highways Act 1980 S130 to:

- assert and protect the rights of the public to use and enjoy the highway
- prevent, as far as possible, the stopping up or obstruction of highways
- prevent unlawful encroachment.

To undertake these duties Essex County Council may take legal proceedings or any steps they deem appropriate.

The Council will make reasonable attempts to resolve problems without recourse to the courts, but will make full use of its legal powers including prosecution, interview under caution or warning, serving notice or taking action under common law as it considers appropriate in each case.

All such duties and actions are performed with due consideration to the principles of good enforcement practice listed below.

# General principles of good enforcement

## Openness

All information will be provided in plain language. We will be open about how we perform our duties, including any charges that we set, and carry out full consultation where required. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

## Helpfulness

We believe that prevention is better than cure and that our role therefore involves actively working to advise on and assist with compliance. We will provide a courteous and efficient service. We will encourage landowners or occupiers and PRow users to seek advice and information from us, with effective links maintained at all times between the Enforcement & Liaison Officer and the Community Action Team. We will ensure that enforcement activities are effectively co-ordinated to minimise unnecessary overlaps and time delays.

## Complaints, appeals and feedback

Well publicised, effective and timely complaints procedures are easily accessible. In cases where disputes cannot be resolved, any right of complaint or appeal will be fully explained, with details of the process and the likely timescales involved. We will also welcome all feedback on our enforcement activities. We will foster and maintain links with user groups and also stakeholder groups such as the National Farmers' Union, the Country Land & Business Association and the Farming & Wildlife Advisory Group.

## Proportionality

Essex County Council recognises that most landowners or occupiers want to comply with the law. This means that the proportionate response to most enforcement situations will be for PRow staff to co-operate with landowners or occupiers to achieve compliance by being open and helpful, offering informal advice and providing the chance to discuss compliance matters. Proportionality also means officers will act with due regard to considerations of risk and cost minimisation.

## Consistency

We will carry out our duties in a fair, equitable and consistent manner. While staff are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for internal liaison and liaison with other local authorities and enforcement bodies.



## Our expectation of landowners or occupiers

This Enforcement Concordat, as stated above, recognises that most landowners or occupiers want to comply with the law. The principles of good enforcement therefore aim to make compliance easier for them by fostering a close partnership approach. This approach brings benefits for landowners or occupiers in the form of a better relationship with PRow staff, easier compliance and a level playing field for the law-abiding; and significant benefits in the form of higher compliance, freeing enforcement resources to tackle those that flout the law or act irresponsibly.

## Prioritisation of cases

The work of the PRow Enforcement and Liaison Officer will generally be prioritised towards:

- a) Minimising risk to the public
- b) Preventing deterioration of the network by timely and appropriate action
- c) Ensuring the mitigation of long term obstruction problems caused by permanent structures (houses, reservoirs, etc), beginning the process of resolution by Public Path Order where appropriate
- d) Working where the problem is on a route of strategic importance

Consideration is also given to the following factors:

- There is a seasonal element in some of the problems on the network so the Enforcement and Liaison Officer's activities may be directed towards those duties at the appropriate times
- The backlog of long term obstruction cases will normally occupy a significant proportion of the Enforcement and Liaison Officer's time.



## Obstructions and encroachments

Obstruction of a highway (including encroachment) is a criminal offence and the Council has various statutory and common law options available to it to address such problems.

Cases will be prioritised according to the principles outlined above, the relevant legislation and the appropriate action decided upon.

Other than in minor cases the landowner or occupier will be notified of the obstruction, asked to remove it within a given time period (generally one month but this may vary depending, for example, on the nature of the obstruction, previous history, weather conditions or any other reasonable consideration) and told of the consequences of failure to do so.

Should the obstruction remain, formal notice may be served on the landowner/ occupier. If the obstruction remains at the end of the notice period, enforcement action to remove it should occur and measures to recover reasonable costs should be taken.

In some cases, the Council may decide that removal of the obstruction and cost recovery is not appropriate and decide either to remove the obstruction under common law or go to prosecution.

Prosecution through the court will not normally occur for a first offence by an individual or company. However, where such a prosecution is considered to be in the public interest, this course of action may be taken.

Although the Highways Act gives timescales for the serving of notices and the waiting period before action can take place some cases may entail research into the history of the route and events on and around it. In such cases the statutory periods may be exceeded but detailed records will be kept outlining the reasons for any delays.



Specific measures have been made to facilitate the enforcement of cases of obstruction/ encroachment by ploughing or cropping under Schedule 12A of the Highways Act 1980 by delegating powers to the Council's Area Highways Teams. The principles of proportionality and consistency are preserved by the presence of a specific policy relating to this aspect of enforcement.

## **‘de minimis’ considerations**

If it is found that there is a small encroachment that does not materially affect the users of the path, the Council may regard it as de minimis and inform the landowner/ occupier of the offence and advise management methods to prevent further encroachment or restore the correct width at a later date.



## **Cost of clearance works & debt recovery**

In cases where enforcement notices have had to be followed by clearance work by the Council then the accrual of costs and the recovery of debts from the landowner/ occupier concerned will be carried out with due consideration to the general principles of good enforcement above. In particular, action will be proportional and regard will be given overall cost minimisation while at the same time considering risks and consistency of service.

**This booklet is issued by**

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Published July 2009.