

# Public Rights of Way – Information Sheet

## Obstructions on Public Rights of Way

The following is a **guide** to set out key points relating to the Council's duties and powers, this is not an exhaustive explanation of the law.

### The Law

Public Rights of Way (PROWs) are highways and protected in the same way as other highways throughout the District. They **must not be obstructed** but must remain open for the public to use them at all times.

Common law and statute (Highways Act 1980) state that it is the primary duty of the Council to assert and protect the rights of the public to the use and enjoyment of any highway. This duty extends to preventing obstructions.



*Various recent obstructions*

Obstructing a PROW (even in part\*) is both a civil and criminal matter. The Council will consider the most appropriate enforcement method depending on the circumstances.

In the event that the Council needs to carry out the works in default it has the power to **recharge** a landowner or occupier for the **removal** of an obstruction on a PROW and this includes the cost of legal expenses and overheads.

In addition, landowners/occupiers have a duty of care to the public and this could be breached, leading to legal proceedings, if members of the public are **injured** on illegal obstructions (i.e. by leaving implements, sarsens, tree trunks etc.) in a PROW.

### Stiles and Gates

At the time of dedication or setting down of PROWs within Berkshire, a record was made of the structures (**limitations**) already on them. These were usually gaps, gates or stiles. Any new limitation will be considered an obstruction unless:

- permission has been sought and granted from the Council to erect **new gates** for **stock keeping** purposes only on footpaths and bridleways on agricultural, equestrian and forestry land; these are then the Landowner's responsibility to maintain.
- The Council itself installed a new structure to ensure the safety of the public.

For information and advice on the installation of a new structure on a PROW please firstly liaise with the PROW Officer for your area.

\*It is worth noting some PROWs were old roads or carriageways and still retain the old road or carriageway width. Please contact the PROW Team if you require information regarding the width of a PROW.

## Obstructions



*Traditional stile*



*Kissing gate*



*Council installed carriage gap*

### Automatic structures

Due to the considerable complexities associated with their safe installation and maintenance, and recent cases of children being injured and killed by them, **automatic** structures will not normally be approved by the Council on PROWs.

### Procedure

Where a PROW is illegally obstructed the Public Rights of Way team will, depending on priority, seek the removal of that obstruction by offering **advice**; direct **action\*** (rechargeable when under a legal notice); formal **caution** and/ or **prosecution** when in the public interest.

- *\*Where an obstruction is an **immediate danger** to the public, the Council reserve the right to remove that obstruction without delay and without notice under its common law duty to “seek, remove and prevent obstructions” (Bagshaw vs. Buxton Local Board of Health (1875)). In certain other circumstances use of this power may be the most effective way of dealing with a particular obstruction and the Council reserve the right to do so in those circumstances.*
- *The Council has been requested to report non-compliance with SPS (Single Farm Payment) and other agri-environment scheme funding rules to the **Rural Payments Agency** particularly the obstruction of PROWs. As a result the Rural Payments Agency and Natural England may carry out their own inspections which may affect agricultural payments received.*

### Useful Contacts

Eastern area - **Sallie Jennings** PROW Officer on **01635 519070** – [sallie.jennings@westberks.gov.uk](mailto:sallie.jennings@westberks.gov.uk)

Western area - **Matthew Walters** PROW Officer on **01635 519448** – [matthew.walters@westberks.gov.uk](mailto:matthew.walters@westberks.gov.uk).

*This advice note is without prejudice to other relevant legislation or case law.*

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