

Enforcement Policy

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

In accordance with the Regulators' Code of 2014, we must publish information explaining how we regulate and develop our policies or procedures which influence our regulatory activities, so that we are transparent and consistent in our approach.

This Policy must be considered in the light of the Street Works Enforcement Policy 2024

HIGHWAY AUTHORITY ENFORCEMENT POLICY

Kent County Council

Introduction

Kent County Council (KCC) is the Highway Authority for the purposes of the Highways Act 1980 (The Act). Section 130 of The Act places 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 and other statutory enactments also exist to enable the Highway Authority to remove obstructions and abate nuisances and these are maintained under Section 333 of The Act. Kent County Council is able to take proceedings in the exercise of this duty and is afforded the discretion to take such steps as it deems expedient.

Aim of this Policy

The aim of the Policy is to explain how KCC prioritises enforcement and the level of its response.

KCC 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.

This policy is to be considered by officers where a defect (see non exhaustive list of defects below) 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.

Principles of Enforcement

KCC is committed to good enforcement practices and the proportionality principle set out within the Government's Enforcement Concordat and the Regulators' Code issued under the Legislative and Regulatory Reform Act 2006 and the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as amended) will be taken into account when deciding which course of action to pursue: **"The action pursued should be balanced, reasonable and commensurate to the scale of the offence."**

This Policy requires that enforcement activities should be carried out in a way which is:

- 1 ***Transparent*** – ensuring that those against whom enforcement action is taken are aware of the legislative requirements and aware of the likely consequences of non-compliance. Distinction will need to be made between statutory requirements and what is good practice

or desirable but not compulsory. Transparency should aid those being regulated in complying with statutory requirements and minimise the need for further enforcement action. Where enforcement action is required an explanation (usually in writing) will be given of why that action is necessary and when it must be carried out.

- 2 **Accountable** – having a process for complaints, appeals and feedback which is well-publicised, effective and timely.
- 3 **Proportionate** – relating the enforcement action to the seriousness of any breach of the law and the potential risks or impact on the public. Some incidents have the potential to place the public's health and safety at risk, others interfere with people's enjoyment and rights and the County Council's ability to carry out its activities. Enforcement action will be proportionate to the risks posed and to the seriousness of any breach.
- 4 **Consistent** – fair and impartial, taking a similar approach in similar circumstances, whilst exercising a level of judgment and professional discretion in individual cases. Taking all relevant factors into account, such as the seriousness of the breach, the impact or potential impact on the public, the attitude of those responsible for the breach and the history of previous breaches.
- 5 **Targeted** – ensuring that enforcement action is directed primarily to where the risks or impact on the public is greatest. Action will be focused on those directly responsible for the breach and who are best placed to control it. Prioritisation will be based on a number of factors including assessment of risk, impact on the public and complaints from the public.

Definitions

Highway

The highway is defined as the whole or a part of a highway, including carriageways, footways and grass areas/verges.

Defects include:

- tree branches and vegetation overhanging the public highway (obstructing the passage of traffic, vehicular or pedestrian, or obstructing visibility)
- unauthorised vehicular accesses (vehicle crossings)
- damage to the highway (roads, paths and verges, including highway signs and apparatus)
- advertising on the highway (including posters and banners on street furniture)
- unauthorised excavation of the highway
- mud or other debris on the highway
- encroachments onto highway land

- obstructions/unauthorised objects placed on highway land

This list above is not exhaustive and only gives a small selection of the defects for which we would consider taking enforcement action.

Enforcement Actions

KCC takes an assessed approach when looking to enforce against those that have caused a defect on the highway within Kent. Any enforcement action will be proportionate to the interference and or risk to the use of the Highway. KCC will consider all of its statutory powers in any combination. The action KCC 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.

Whilst KCC would normally commence enforcement action by giving *Advice* and only escalate to a more severe course of action if that were unsuccessful, it reserves the right to issue an *Enforcement Notice* or instigate *prosecution proceedings* immediately where it is appropriate to do so. This may be considered justified if the breach was particularly serious or the offender had a history of similar offences.

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 (tenant) of the land adjoining the defect or any other person having control of it or 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.

When prioritising cases or deciding whether or not to take action, KCC will take account of the characteristics of the highway and the extent to which the defect interferes with the use and enjoyment of the highway user.

Prosecutions will normally be a last resort but remain an important part of the enforcement process with each case being considered on its own merits, taking into account all the circumstances and in accordance with the Code of Practice for the Crown Prosecution Service.

Prosecution may be appropriate where one or more of the following applies:

- There is a significant risk to public safety.
- There is a flagrant breach of the law, or if notice has been given that legal proceedings will be considered for future breaches.
- There has been a failure to heed advice or instructions or take corrective action.
- There is a history of infringements by the defendant.
- A conviction is likely to result in a significant fine or other penalty.
- The offence is widespread within the KCC area.

Each case will be subjected to an ongoing process of review to ensure the level of enforcement action continues to be appropriate. Once KCC decides to prosecute, it will proceed without undue delay.

Recovery of Costs

Kent County Council will always seek full recovery of enforcement costs.

Appeals and Complaints

Appeals in relation to enforcement action taken should be via the statutory appeals process outlined in the relevant legislation. Complaints about the conduct of officers should be made via the council's corporate complaints procedure.