

DELEGATED DECISION

REGENERATION AND ECONOMIC DEVELOPMENT



15 May 2018

Obstruction of West Rainton Footpath 12 by a post and rail fence Highways Act 1980 Section 143 notice

Report of Adrian White – Head of Transport and Contract Services

Purpose of the Report

- 1 To authorise the serving of a legal notice under Section 143 of the Highways Act 1980 and the taking of remedial action to ensure the removal of the obstruction, should the Notice not be complied with.

Background

- 2 The issue of the footpath being blocked was raised with the Council by the Rural Payments Agency in 2017. This is the government agency responsible for the processing of payments (EU's Common Agricultural Policy) to farmers, traders and land owners. It carries out some checks on farms because there are cross compliance requirements known as 'Good Agricultural and Environmental Conditions' which include the keeping of public rights of way properly available.
- 3 The footpath is currently obstructed by a post and rail fence and requires a stile or gate to be constructed through it to allow pedestrian access.
- 4 The rights of way officers have spoken with, written to and emailed the owner who has indicated that he will build a stile, however, no action has materialised. A similar situation occurred on the same path in 2016 resulting in similar Section 143 Notices being served in order to secure the provision of a stile at a different point along the path (at the roadside). The owner complied with that Notice.
- 5 The Highways Act 1980 Section 143 provision allows for the Council to serve a Notice on anyone responsible for an obstruction and allowing, should the person not comply with it, for the Council to carry out any remedial work.

Details of any alternative options considered and rejected when making the decision

- 6 The Section 143 provision enables the Highway Authority to be able to deal with 'minor' issues such as this without having to resort to criminal proceedings. Further contact could be made with the owner to encourage compliance, however, the serving of a Notice is more likely to secure compliance quicker. The issue needs to be concluded.

Recommendations and Reasons

- 7 The Council has a duty under the Highways Act 1980 Section 130 'to assert and protect the rights of the public to the use and enjoyment of any highways for which they are the highway authority'. This duty includes taking action to secure the removal of any obstructions or encroachments. The serving of the Notice will achieve a resolution while giving the Council the ability to remove the obstruction under statutory powers. Attempts so far to encourage compliance by the owner have not succeeded.
- 7 The fence is an obstruction of the public footpath and pedestrians must climb over it.
- 8 It is recommended that a Notice under the Highways Act 1980 Section 143 is served on the owner for the removal of the padlock. Compliance with the Notice could include the provision of a stile and this will be explained to the owner.

Decision

- 9 A Notice under the Highways Act 1980 Section 143 be served on the owner.
- 10 If the Notice is not complied with, in the time specified, then remedial default action to be taken by the Council to deal with the obstruction including the recovery of reasonable costs.

Contact: Audrey Christie Tel: 03000 265332

Background papers

[\\DUCH-3900\Environment\ENV-SYS2\Rights of Way\Cams\PathFolders\West Rainton 130\12\2017 Fence obstruction](#)

Appendix 1: Implications

Finance Enforcement of highways legislation is a statutory duty but costs of remedial work can be reclaimed from person/s responsible for an obstruction

Staffing Routine officer responsibilities

Risk Minimal

Equality and Diversity / Public Sector Equality Duty None

Accommodation None

Crime and Disorder The Notice seeks compliance with legislation.

Human Rights Highways law is primary legislation and sets out what constitutes an offence and the remedies available for the Council. This duty is not outweighed by individual human rights.

Consultation None

Procurement None

Disability Issues No direct impact

Legal Implications If the Notice is not complied with remedial action will need to be taken to remove the obstruction and the costs recovered from the owner

Plan showing location of fence

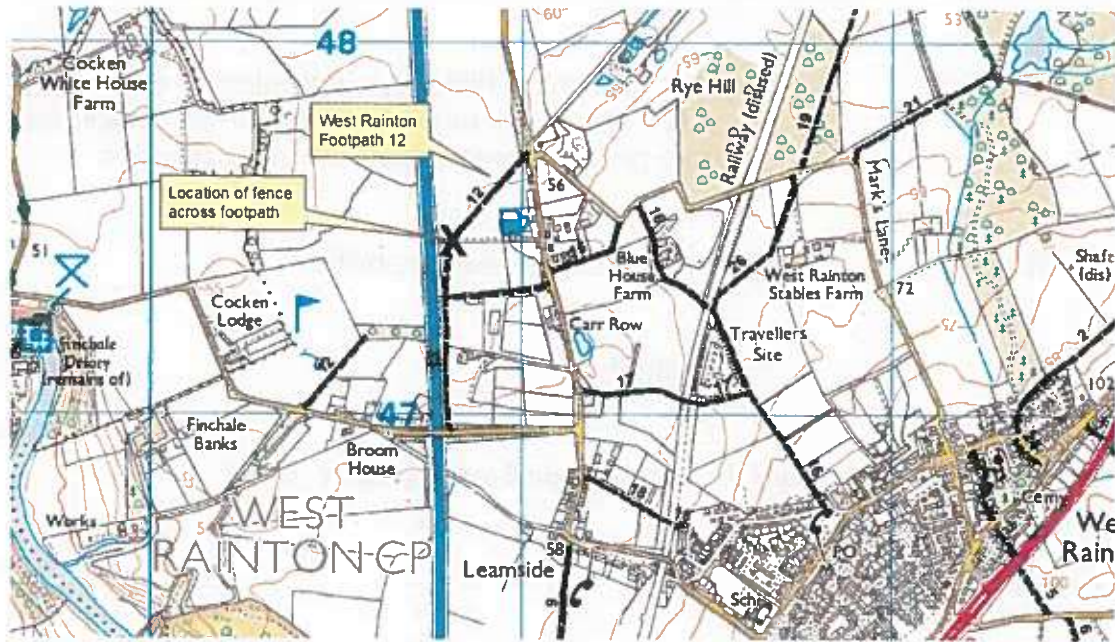


Photo of fence

