

## Highway Obstructions Policy

### **1. Policy Vision**

1.1. To maximise the potential of the highway as a venue for social interaction, trade, and advertisement, whilst minimising as much as reasonably possible the potential for the disruption of the use of the highway for transport purposes and acknowledging the need to maintain the structure, utilities and services beside, on and under the surface of the highway.

### **2. Linked Policies**

2.1. Unless appropriate authorisation can and has been given using one of the policies below then this policy will be applied:

- Stockport Town Centre Pavement Café Scheme Guidance and Application Form
- Supplementary Planning Guidance, Shop fronts and Related Advertisement.
- Highway Charges Policy, 2008
- Greater Manchester Road Activities Permits Schemes ('GMRAPS') (Expected to become active June 2012)
- Advertising Board and Trade Goods on the Highways Obstructions Policy
- Positive Path Management Policy
- Policy ES 02: Recycling & Refuse Collections, 2011
- Policy Statement Special Events on the Highway, 2009
- Community and Charity Event Advertising (DRAFT) 2012

### **3. Background**

3.1. The Council is responsible for overseeing the highway as the 'Highway Authority' and as a part of the Joint Authorities of Greater Manchester.

3.2. Section 130 of the Highways Act 1980 places a duty on the Local Highway Authority to protect the rights of the public to use and enjoy the highway.

3.3. Obstructions on or over the highway can interfere with the legitimate use of the highway and are a potential safety hazard. Measures may be taken by the Council for the removal of obstructions that do not have the appropriate authorisation.

3.4. This policy does not specify a specific minimum width of the highway which must be retained for the highway to remain passable. Instead, it

stipulates that any deposit on/encroachment of the highway (both carriageway and footpath including those defined as Public Rights of Way) not covered by the permission of a specific licence or agreement with the highways authority may be considered to be obstructing and /or endangering highway users where it meets the definitions used in the Highways Act 1980 or other relevant acts and regulations. Though some relevant sections of acts and regulations are outlined in this policy this does not represent a full list and the full acts or legal guidance should be sought for a complete guide.

- 3.5. Other policies, where permissions may be given, will identify limits of use of the highway to protect the needs of the public and so minimise the effect of that specific use. These are intended as a guide to decision making in conjunction with other factors and are not intended to be used as a guide to what is acceptable in other locations by unauthorised persons

Under Section 137 of the Highways Act 1980 the Council can prosecute any person who obstructs the free passage of the highway. The Act also allows for the application to the magistrates court for orders for the removal of obstructions<sup>1</sup> on the highway.

- 3.6. Obstructions on the highway take various forms and the most commonly encountered occurrences are as follows: unauthorised signs, erections (buildings and fences), materials and trading booths.

- 3.7. The Highway Authority may serve notice under the appropriate section of the Highways Act to deal with the removal of obstructions which have not been given appropriate authorisation, for example<sup>2</sup>:

- Section 132 of the Highways Act 1980 – unauthorised signs and structures.
- Section 138 of the Highways Act 1980 – illegal erection of a building or fence.
- Section 148 of the Highways Act 1980 – removal of dangerous deposits.
- Section 154 of the Highways Act 1980 – removal of dangerous trees.

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<sup>1</sup> *Note:* There is no legal definition of an obstruction, so if and when a case comes before them, it is up to the courts to decide on a case-by-case basis whether the obstruction in question is actually unlawful. Factors influencing this decision will include the reason for the obstruction, its location, how long it has been there and whether or not it is temporary.

<sup>2</sup> This is not a definitive list and the Highways Act 1980 should be consulted to ensure appropriate sections of the Act are applied.

- Section 143 of the Highways Act 1980 – removal of structures.
- Section 161A of the Highways Act 1980 – nuisances and hazards caused by fire.
- Section 178 of the Highways Act 1980 – placing beams, rails, pipes, cables, wires or similar over the highway without appropriate consents.

3.8. In addition;

- Section 89 of the Environmental Protection Act 1990<sup>3</sup> states that councils have a duty of care to keep land and highways clear of litter etc.
- Under Section 149 Highways Act 1980 a highway authority has a power to immediately remove from the highway anything that it reasonably considers to constitute a danger to highway users. It can also recover the costs of doing so.

#### **4. Special Issues**

##### 4.1. Pavement Parking

4.2. The Council could identify using the appropriate traffic regulation order and the related signage areas where they will enforce against pavement parking using civil enforcement measures. Currently this is not done in Stockport. Where traffic regulation orders are in place, such as double yellow lines, these include the pavement and so the council's civil enforcement officers can act. Otherwise this is a police issue.

##### 4.3. Fly Tipping

- The Council follows the legislation of the Environmental Protection Act 1990 with regards to dealing with fly tipping on the highway.

##### 4.4. Selling and Repairing of Cars on the Highway

- The Council follows the legislation of the Environmental Protection Act 1990 as amended by the Clean Neighbourhoods and Environment Act 2005<sup>4</sup> with regards to the selling and repairing of cars on the highway.

##### 4.5. Abandoned Vehicles

4.6. The Refuse Disposal (Amenity) Act 1978 and the Clean Neighbourhoods and Environment Act 2005 contain powers that

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<sup>3</sup> The Act itself should be consulted for details – this policy is not a definitive guide to the Act.

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enable the Council to deal with abandoned vehicles. Fixed penalty notices may also be issued with respects to abandoned vehicles under provisions in the Clean Neighbourhoods and Environment Act 2005. However; in Stockport A fast track scheme for removal of abandoned vehicles through the Greater Manchester Police is used to deal with abandoned motor vehicles.

4.7. Abandoned vehicles should be reported to Public Realm Services on 0161 2176111.

4.8. Details of the following should be provided:

- registration number of vehicle
- make and model of vehicle
- precise location of vehicle

4.9. Obstructions Which are Police Issues:

4.10. Where there is no blanket prohibition on parking on verges/pavements, a particular incident of verge/pavement parking may be considered dangerous or obstructive or cause damage and may constitute a criminal offence under one of the following statutory provisions<sup>5</sup>: -

- Section 28 Town Police Clauses Act 1847 - wilfully causing an obstruction to any public footpath or public thoroughfare.
- Regulation 103 Road Vehicles (Construction and Use) Regulations 1986 - vehicles causing unnecessary obstruction of the road (including verge).
- Section 22 Road Traffic Act 1988 - leaving vehicles in a dangerous position on the road (including verge).
- Section 137 Highways Act 1980 wilful obstruction of the free passage along a highway.
- Section 72 Highways Act 1835 - driving on any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers.
- Section 131(1)(c) Highways Act 1980 - deposits anything whatsoever on a highway so it would damage the highway
- Road Traffic Regulations Act 1984 sets out powers to remove vehicles that are broken down or causing an obstruction for the

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<sup>5</sup> For details of the Acts and Regulations listed the documents themselves should be consulted this policy is not a definitive guide to these Acts and Regulations.

Police (or – following the Traffic Management Act 2004 – by designated Traffic Officers).

4.11. Other Relevant Legislation

- The following legislations may also impact on the utilisation of a area of the highway:
- Town and Country Planning Act 1990
- Town and Country Planning (Control of Advertisements) (England) Regulations 2007
- The Licencing Act 2003
- The Health and Safety at Work etc Act 1974
- The Health Act 2006

## 5. Objectives

- To protect the rights of the public to use and enjoy the highway, including Public Rights of Way.
- To deter obstructions and ensure that those that occur are dealt with in a timely manner.
- To ensure that the rules around obstructions are clearly understandable by the public (including businesses) for ease of enforcement.
- To direct people to appropriate guidance provided by other council policies as relevant.
- To provide a height clearance, where traffic orders do not restrict size and height of vehicles, of 17 feet (5.20m)
- To respond to complaints about obstructions from the public appropriately.

## 6. Principles

6.1. In order to do this:

- Investigation of cases for enforcement activity will be limited to those that are a serious detriment and/or present a hazard as determined by professional officers.
- The rules regarding obstruction of the highway will be clearly outlined on the council website.
- Any uses of the highway that could cause obstruction but are considered of public benefit will be identified and the Council will authorise them as outlined in one of the identified policy documents in section 2.
- Any obstructions not identified or authorised by a policy in section 2 will be addressed in line with the relevant legislation.

- Where the obstruction constitutes an immediate danger and the owner of the obstruction can be readily identified but cannot remove the obstruction immediately themselves the council will remove the obstruction and issue a letter informing the owner. An example of the notice letter is attached as Appendix 1
- Where person responsible for an obstruction which is dangerous or is not permitted cannot be identified, it will be removed by the council without notice being issued.
- All costs incurred by the Council for the removal of obstructions will be reclaimed where possible from the parties involved.

## **7. Monitoring**

7.1. Continuous monitoring will be essential for safety and certain operational purposes, including those required by the Traffic Management Act 2004. Systems will be in place to provide regular updating on such matters as planned (and un-planned) highway obstructions and all potential disruptions, including works by the authority and third parties.

7.2. This will be done by Greater Manchester Road Activities Permit System (GMRAPS).

## **8. Terms Used**

**Highway** - the carriageway, the footway and verge including those routes defined as public rights of way.

## **9. References**

Highways Act, 1980,

Environmental Protection Act, 1990,

Clean Neighbourhoods and Environment Act, 2005

Refuse Disposal (Amenity) Act, 1978

Town Police Clauses Act, 1847

Road Vehicles (Construction and Use) Regulation, 1986

Road Traffic Act, 1988

## **10. Contacts**

Traffic Services (General Advice)

Engineering Services

Floor 1, Fred Perry House, Stockport. SK1 3XE

**E:** [traffic.services@stockport.gov.uk](mailto:traffic.services@stockport.gov.uk) **T:** 0161 474 4872 **F:** 0161 474 4833

Planning Services - Development Management (for planning applications)

**T:** (0161) 474 3541 or (0161) 474 3569

**E:** [planning.dc@stockport.gov.uk](mailto:planning.dc@stockport.gov.uk)

**Web address -**

[www.stockport.gov.uk/services/environment/planningbuildingplanningpolicy/developmentmanagement](http://www.stockport.gov.uk/services/environment/planningbuildingplanningpolicy/developmentmanagement)

Building Regulations - Building Control (for building regulation applications)

**T:** (0161) 474 3658 / 3571 or 3575

**E:** [building.bc@stockport.gov.uk](mailto:building.bc@stockport.gov.uk)

**Web address -**

[www.stockport.gov.uk/services/environment/planningbuildingplanningpolicy/buildingregulation](http://www.stockport.gov.uk/services/environment/planningbuildingplanningpolicy/buildingregulation)

Conservation Advice

**T:** (0161) 474 4561 or (0161) 474 2620

**E:** [fiona.albarracin@stockport.gov.uk](mailto:fiona.albarracin@stockport.gov.uk)

Web address – [www.stockport.gov.uk/historicareas](http://www.stockport.gov.uk/historicareas)

Licensing Team

Environmental Health and Trading Standards

Stopford House, Piccadilly, Stockport. SK1 3XE

**E:** [licensing@stockport.gov.uk](mailto:licensing@stockport.gov.uk) **T:** 0161 474 4311 **F:** 0161 474 4369

## Appendix 1

### Example Standard Letter: Removal Notification

**Our Ref**

**Your Ref**

**Date**

Dear Sir/ Madam,

The ...(description of obstruction)...which was located at ...(location description)... did not have permission from Stockport Council and was a danger to the public. **The placement of this obstruction constituted an offence under the terms of the Highways Act 1980: Section 148.** (Identify correct section of Act)

Stockport Council has removed this obstruction under the terms of the Highways Act 1980: Section 148 and will be charging you for all the costs involved in this removal.

Phone the number at the head of the letter with any questions regarding this letter.

Yours faithfully,

