

NORTHUMBERLAND COUNTY COUNCIL

PROPOSED GUIDANCE FOR ENFORCING UNAUTHORISED OBSTRUCTIONS IN THE HIGHWAY

Introduction

This guidance is intended to set out the general assessment methodology that will be used to determine whether unauthorised obstructions present a danger or potential danger to highway users.

Unauthorised obstructions can include anything that is placed within the highway and is not authorised through the Highways Act, for example A boards, pavement cafes, goods for sale.

This guidance allows for a flexible approach taking into account the nature of the footway, pedestrian flows and the protection of the rights of the public to use and enjoy the highway. Providing the assessment criteria are satisfied the County Council will not prioritise the removal of unauthorised obstructions under normal circumstances. However, you should remember that even when an unauthorised obstruction is deemed not to present a danger to highway users, this does not mean that it is authorised by the County Council.

You will be liable for injury caused by your unauthorised obstruction, or potential action under the Equality Act if your unauthorised obstruction causes substantial disadvantage to members of protected groups such as visually impaired customers.

There are situations where, given the available footway width and pedestrian flows, it is not considered 'safe' or desirable to allow any unauthorised obstructions in the highway.

There are several provisions within the Highways Act 1980 (the Act) which enable the County Council to take action against unauthorised obstructions:

- Under Section 132 of the Act the highway authority may remove any sign that has been affixed upon the surface of the highway or any structure in the highway.
- Under Section 137 of the Act if a person, without "lawful authority" or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to a fine.
- Under Section 149 of the Act , a highway authority has the power to:
 - Immediately remove from the highway anything which it reasonably considers constitutes a danger to highway users and ought to be removed without delay and can recover the costs of doing so.
 - Remove by notice anything deposited in the highway as to constitute a nuisance.
- Section 130 of the Act places a duty on the Highway Authority to prevent, as far as possible, the obstruction of the highway where this impacts upon the rights of the public to use and enjoy that highway.

The Council has powers under the Local Government (Miscellaneous Provisions) Act 1982 to issue street trading licences and holding such a licence would be classed as "lawful authority" (i.e. an authority expressly created by statute). Street trading licences may include

conditions specifying the size and type of any stall or container which the licence holder may use for trading. The licensing team should therefore be consulted before any action is taken against street traders.

The Council also has powers under the Licensing Act 2003 to include within the conditions for licensed premises a stipulation that no unauthorised signs are permitted for safety reasons e.g. an unauthorised sign could potentially be used as a weapon outside premises where alcohol is consumed.

The County Council has the powers to dispose of any unauthorised obstruction removed under Section 149 of the Act. In cases where perishable goods are removed there may be a need to dispose of the goods in an appropriate manner and recover the costs for doing so. There is no provision in Section 149 of the Act for the person affected to claim compensation from the County Council.

Assessment

The procedure will be applied in relation to the network hierarchy that has been adopted. As a guideline category 1a, 1 & 2 footways should be monitored as part of routine inspections and for category 3, 4 & 5 footways we should respond to reported incidents.

The guidance document Inclusive Mobility, Department for Transport, 15 December 2005 makes the recommendations for minimum required clear width and minimum unobstructed height for footways, footpaths and pedestrian areas:

Table 1 sets out the recommendations which should be used by Inspectors to determine whether unauthorised obstructions present a danger or potential danger to highway users. In cases of dispute the final decision will rest with the Highways Area Manager.

It should be noted that there will be situations where given the available footway width and pedestrian flows it is not considered 'safe' to allow any unauthorised obstructions in the highway. In this situation the Inspector will clearly communicate the reasons why to you.

The desirable minimum widths should always be applied where achievable. However, it is recognised that in certain circumstances available space will not be sufficient to achieve these dimensions. A judgement will therefore need to be taken based on available width and pedestrian flows. The County Council will always seek to retain the desirable minimum width where it is considered appropriate and necessary to do so.

The DfT recommend that obstructions should be grouped in a logical and regular pattern to assist visually impaired people. Obstructions should therefore be placed so as to leave clear pedestrian routes, for example by ensuring a consistent 'shoreline' of A-boards along either the front or back of the footway. Owners will be responsible for ensuring that unauthorised obstructions such as A boards, goods displays and pavement café furniture are always positioned in the same place to assist visually impaired to identify and avoid the obstacle.

Table 1 – Required Minimum Footway Widths for Unauthorised Obstructions to be considered

Category	Hierarchy	Description	Minimum Required clear width	Minimum Unobstructed height	Assessment
1a	Prestige Pedestrian Zone	Pedestrianised areas	2 metres absolute minimum 3.5 metres desirable minimum	2.1 metres Absolute minimum 2.3 metres desirable minimum	Monitored as part of routine inspections
1	Primary Pedestrian Route	Busy town centre shopping and business areas, and main pedestrian routes linking transport interchanges to the town centre.	2 metres absolute minimum 3.5 metres desirable minimum		Monitored as part of routine inspections
2	Secondary Pedestrian Route	High usage routes connecting a number of residential areas and providing access to the primary routes, shopping centres, large schools, leisure complexes and industrial centres.	1.5 metres absolute minimum 2 metres desirable minimum		Monitored as part of routine inspections
3	Link Footway	High/Medium usage routes providing a link for a residential area to the primary and secondary walking routes.	1.5 metres absolute minimum		Respond to reported incidents
4	Local Access Footway - Urban	Urban low usage footways, usually on housing estates.	1.5 metres absolute minimum		Respond to reported incidents
5	Local Access Footway - Rural	Rural, Low usage, usually between villages	1.5 metres absolute minimum		Respond to reported incidents

Conditions

To help you understand the guidance and what you can and cannot provide we have produced the following conditions:

Unauthorised obstructions:

- must not be placed in locations where they obstruct visibility for either drivers or pedestrians e.g. in close proximity to junctions.
- you must consider the impact of your unauthorised obstruction on neighbouring properties and therefore the obstruction, eg A board or goods, must be directly adjacent the business property.
- must be temporary in nature so that they can be easily removed in their entirety.

- must be removed from the street when the property is closed or street cleansing works are being undertaken.
- must be placed against the frontage or property boundary
- must be covered by your public liability insurance.
- You must leave the agreed minimum width of footway appropriate for pedestrians in your street, if this is not possible then you cannot have any unauthorised obstruction here.

In particular, as there are so many A boards, if you wish to place an A board outside of your property in Northumberland then you must follow the specific conditions below:

- It must be no bigger than 660mm wide, 1250mm high.
- It must be stable and not weighed down by sandbags.
- It must not have any sharp edges, and swinging or rotating boards are prohibited
- The information contained on it should be appropriate and relevant to your business. Examples of information that may be considered inappropriate or irrelevant are:
 - where a supermarket is advertising fuel when there is no filling station
 - advertising Sunday lunch on a Wednesday
 - if the A-board replicates what is already advertised in your shop window
 - It must not carry any offensive or political message
 - (The above list is not exhaustive.)

Process for Removal

Following an assessment that considers that an unauthorised obstruction presents a potential danger or impacts upon the rights of the public to use and enjoy the highway then you will be notified. In most cases written notification should be provided, but where there is an immediate danger, oral notification will be given. You should be provided with the opportunity to make the footway safe by removing the unauthorised obstruction or relocating it where this is practical and appropriate.

If you do not relocate / remove the unauthorised obstruction, or if it re-appears in a place where it still presents a danger or potential danger to highway users then it will be removed by Highways Officers.

A fee of £50.00 per item will be charged where Highways Officers are required to remove an unauthorised obstruction constituting a danger under Section 149 of the Act. Furthermore, the County Council has the right to recover from the owner of the item (s) any additional costs incurred in the removal, transport and disposal of the item (s). The fee is payable on release of the item (s), or where an item (s) is not reclaimed an invoice will be raised.

Unauthorised obstructions will be released on payment of the fee, but it remains the owner's responsibility to collect the object from the appropriate Highways Area Office.

It should be noted that the County Council has the powers to dispose of any unauthorised obstruction removed under Section 149 of the Act where necessary and recover the costs for doing so.