



RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2018/19

**PUBLIC SERVICE DELIVERY,
COMMUNITIES & PROSPERITY
SCRUTINY COMMITTEE**

31st January 2019

**REPORT OF DIRECTOR OF HIGHWAYS
AND STREETCARE SERVICES**

Agenda Item No: 4

**REPORT ON THE STATUTORY
PROCESS FOR THE REMOVAL OF
CARAVANS AND OTHER
OBSTRUCTIONS FROM THE
HIGHWAY**

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1. PURPOSE OF REPORT

- 1.1 The purpose of the report is to inform Members of the Public Service Delivery, Communities and Prosperity Scrutiny Committee on the statutory process(es) that are in place for the removal of Caravans and other obstructions from the Highway.

2. RECOMMENDATIONS

It is recommended that Members:

- 2.1 Scrutinise the content of the report: and
- 2.2 Consider whether they wish to scrutinise in greater depth any further matters contained in the report.

3. BACKGROUND

- 3.1 This Authority from time to time receives public complaints regarding the parking of caravans on the highway. This practice is often viewed by residents as an unreasonable use of the public highway and one that exacerbates existing parking problems.

4. UPDATE / CURRENT POSITION

- 4.1 This report will detail the procedures available to the Highway Authority to deal with such matters. N.B this procedure would also apply to trailers or indeed any other obstruction of the highway.
- 4.2 When considering whether action is required, Highway Officers currently need to make judgements based on individual circumstance based on the following:
- 4.2.1 If the caravan is parked at the side of the road, whilst unsightly, it may not constitute any further nuisance than other vehicles parked in the highway.
- 4.2.2 The parking of vehicles/caravan temporarily on the highway as an incidental usage of the highway - for example visiting premises adjoining the highway - may be a reasonable and lawful use of the highway, whilst the parking of a vehicle/caravan on the highway for an overly long period may render it an obstruction. It will depend upon the facts of each case.
- 4.2.3 At Common Law the Highway Authority are entitled to remove from the highway anything which causes a nuisance or obstructs the free passage along the highway. There are also provisions in the Highways Act 1980 which give the Highway Authority power to require the removal of objects in the highway which could potentially be applied to the parking of caravans.
- 4.2.5 S.143 Highways Act 1980 gives the Highway Authority power to remove a structure that has been erected or set up on a highway. The matter of determining whether the placing of a caravan could properly be termed as erecting or setting up a structure is dependent upon the degree of permanence involved.

If it is determined that action should be taken under s.143 Highways Act 1980 to remove the caravan then a notice must be served on the person having control or possession of the caravan to remove it within such time as specified in the notice. The specified time must not be less than one month from the service of the notice. If the caravan is not removed within the time specified then the Highway Authority may remove the caravan and recover its reasonable costs.

- 4.2.6 S.149 Highways Act 1980 provides powers for the Highway Authority to remove things so deposited on a highway so as to be a nuisance. In order for the caravan to be considered a nuisance the usual tests have to be applied i.e. whether it is of a permanent or temporary nature and whether it is de minimis.

If it is determined that the caravan is causing a nuisance then the Highway Authority can proceed under S.149 Highways Act 1980. Again a notice must be served on the person who deposited the caravan requiring them to remove it forthwith. If that person fails to remove the caravan a complaint may be made to the magistrates court for a removal and disposal order. If, however, the Highway Authority have reasonable grounds for considering that the caravan constitutes a

danger to other users of the highway and ought to be removed without the delay involved in getting a court order they may remove the caravan. Again the Highways Authority can claim their reasonable costs.

4.2.7 If the caravan has been abandoned the Council has a duty to remove the caravan under s.3 Refuse Disposal (Amenity) Act 1978.

4.2.8 In addition to the various powers, and procedures available, to be adopted by the highway authority, for various aspects of obstructions to the highway detailed under this section, it is important to remember that the Police are able to take the most effective action using their powers under section 137(2) of the Highways Act (1980).

Officers investigating infringements of the provisions of the Highways Act (1980) should maintain such records that can establish and record the facts, to the satisfaction of a Court of Law. Dated photographic evidence and personal diary entries are essential for all incidents leading to the issue of letters and Notices under the terms of the Highways Act.

It is important that all staff use good judgement as to when to initiate action under the Highways Act (1980). They should consider the degree of the problem being caused and decide whether or not to initiate action **i.e. action is not mandatory in all cases.**

A constable may arrest without warrant any person who without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway - a highway being comprised of footway, carriageway and verge.

Requests to the Police for assistance in cases of such obstructions can be made either informally using the local contacts or formally via a letter to the headquarters in Bridgend.

4.3 The current procedure which was originally scripted and adopted by the former Mid Glamorgan County Council was issued on 12th February 1998 as part of the Rhondda Cynon Taf CBC Area Officers Manual and is followed by Highway Officers in all cases of obstruction of the highway:

4.3.1 Removal of Obstructions which cause a Nuisance only:

General obstructions such as boats, immobilised trailers/vehicles/caravans and contractors plant/sheds are often encountered as a nuisance.

Where such a general type of obstruction is observed as a nuisance the following procedure is to be followed:-

(a) the specific highway location where the obstruction is situated is identified by complaint or routine inspection.

- (b) the person responsible for the offence (under Sections 143 and 149) is requested to remove the specific obstruction from the highway and letter **OBSGEN1** is sent as an initial written request if verbal contact has been unsuccessful.
- (c) the area is re-inspected after the relevant period and if no action has been taken, the matter is brought to the attention of the Group Director for serving of a notice **OBSTRUCT2** accordingly.

4.3.2 Removal of Anything Deposited on a Highway which Constitutes a Danger:

The following procedure should be followed (Section 149(2) of the Highways Act (1980) refers) for any obstructions on the highway which pose a potential **danger** to the highway user.

It should be noted that under other sections of the Highways Act 1980, the County Borough Council is empowered issue a licence for the placement of items on the highway e.g. Skips, Scaffolding, Builders Material, Tables and Chairs etc.

- (a) If person responsible can be identified, instruct immediate removal giving time period allowed.
- (b) If person responsible does not comply with instruction for removal within the stipulated time period undertake removal and recharge owner (Highways Act 1980 Section 149 (3)(c)) by issuing letter **DANGER1**.
- (c) If person responsible cannot be identified, remove to store or tip depending on the nature of obstructing material. If the owner is subsequently identified, letter **DANGER1** can be sent for recovery of costs incurred in removal.

5. **EQUALITY AND DIVERSITY IMPLICATIONS**

5.1 There are no Equality or Diversity implications aligned to this report

6. **CONSULTATION**

6.1 There are no Consultation implications aligned to this report

7. **FINANCIAL IMPLICATION(S)**

7.1 There are no Financial implications aligned to this report

8. **LEGAL IMPLICATIONS OR LEGISLATION CONSIDERED**

8.1 Sections of the Highway Act applicable to this matter are detailed below: -

8.1.1 Section 130 of the Highways Act 1980 places a general duty on the Council as highway authority to protect the public's right to the use and enjoyment of the

highway. This includes any unlawful encroachment on the highway or any roadside waste forming part of the highway.

- 8.1.2 Section 137 makes it an offence to wilfully obstruct the free passage along a highway.
- 8.1.3 Section 143 provides a procedure for serving notice to remove structures (which may include structures such as caravans and trailers which are on wheels).
- 8.1.4 Section 149 deals with removal of anything deposited on a highway in such a way as to cause a nuisance.
- 8.2 If a caravan has been abandoned the Council has a duty to remove the caravan under s.3 Refuse Disposal (Amenity) Act 1978.

9. LINKS TO THE COUNCIL'S CORPORATE PLAN / OTHER CORPORATE PRIORITIES/SIP

- 9.1 The Notice of Motion considered and the resulting recommendations of the Scrutiny Working Group linked to the Corporate Plan in respect of people and place – Promoting independence and positive lives for everyone and creating neighborhoods where people are proud to live and work.
- 9.2 The Notice of Motion considered and the resulting recommendations of the Scrutiny Working Group linked to the Corporate Plan in respect of people and place – Rhondda Cynon Taf's local environment will be clean and attractive, with well maintained roads and pavements, flowing traffic, increased recycling and less waste sent to landfill.
- 9.2 The Notice of Motion can be linked with the Well Being of Future Generations (Wales) Act, helping to create a resilient Wales and a Wales of cohesive communities.

10. CONCLUSION

- 10.1 The current procedure which was originally scripted and adopted by the former Mid Glamorgan County Council was issued on 12th February 1998 as part of the Rhondda Cynon Taf CBC Area Officers Manual and is followed by Highway Officers in all cases of obstruction of the highway.
- 10.2 It is a Statutory Procedure empowered by the Highways Act 1980 and is in line with the procedures followed by most if not all highway Authorities in Wales and England.

Appendix A - Standard letters

OBSGEN1

*ADDRESSEE
*ADDRESS LINE 1
*ADDRESS LINE 2
*ADDRESS LINE 3
*ADDRESS LINE 4

*My Ref.

*Your Ref.

*Person
*Date

Dear Sir,

**OBSTRUCTION OF THE HIGHWAY
SECTIONS 143 & 149 - HIGHWAYS ACT (1980)**

An inspection was carried out on ***** (insert Date) and it has been observed that ***** (insert Obstruction) has been placed on the County Borough Highway at ***** (Insert Location)

The County Borough Council as the highway authority has powers under Sections 143 and 149 of the Highways Act (1980) to serve a notice requiring the removal of the obstruction but your co-operation in this matter would obviate the necessity of taking such action.

I shall be grateful therefore if you would attend to this matter immediately upon receipt of this letter.

I look forward to your cooperation in the above matter and enclose a reply for return to me to confirm that you have taken the necessary action to comply with my request.

If you have any difficulties in this regard or wish to discuss the matter further please contact ***** (insert Name) on the above telephone number.

Yours faithfully,

for Director of Highways and Streetcare

OBSTRUCT2

**RHONDDA CYNON TAFF COUNTY BOROUGH COUNCIL
NOTICE PURSUANT TO S.149 HIGHWAYS ACT 1980**

REQUIRING REMOVAL OF DANGER UPON THE HIGHWAY

To: ..NAME..

of: ..ADDRESS..

TAKE NOTICE that Rhondda Cynon Taff County Borough Council hereby give you notice that

WHEREAS merchandise deposited by you on the highway outside your premises known as ..NAME.. at ..LOCATION.. so as to constitute a nuisance and an obstruction to users of the highway.

NOW by virtue of the provisions of Sections 149(2) and 149(3)(a) of Highways Act 1980, the Rhondda Cynon Taff County Borough Council will undertake the removal of the said deposit and may recover from you the reasonable expenses incurred in so undertaking this task [or may make a complaint to a magistrates court for a disposal order]

AND FURTHER TAKE NOTICE that if a disposal order is granted the County Borough Council may apply the proceeds of sale to the expenses of removal and the maintenance of highways and if the proceeds are insufficient to pay for the expense of removal the Council may recover the balance from you.

for Director of Highways and Streetcare

..DATE..

DANGER1

*ADDRESSEE
*ADDRESS LINE 1
*ADDRESS LINE 2
*ADDRESS LINE 3
*ADDRESS LINE 4

*My Ref.

*Your Ref.

*Person
*Date

Dear Sir,

REMOVAL OF ANYTHING DEPOSITED ON A HIGHWAY WHICH CONSTITUTES A DANGER - SECTION 149: HIGHWAYS ACT (1980)

An inspection was carried out on **..DATE..** and the following material deposited on the highway was deemed a danger and removed by the Highway Authority.

Description

Location:-.....

Material:-

The cost of the removal will be rechargeable to yourselves and an invoice will be issued in due course.

The material in question is available for your collection subsequent to payment of the invoice *

* delete if inapplicable

If you have any difficulties in this regard or wish to discuss the matter further please contact **..INSERT NAME..** on telephone number **...INSERT NUMBER..**

Yours faithfully,

for Director of Highways and Streetcare

