



Meeting

Members of the St Nicholas with Bonvilston Community Council are summoned to attend a meeting of the council, to be held remotely, on **Tuesday 6th July, 2021 at 7:30 pm**. Members of the public are welcome, and encouraged to attend, and will have opportunity to address the council.

The meeting will be held remotely in accordance with the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020, and can be accessed via the internet or by telephone. The meeting will be recorded to ensure the accuracy of the Minutes.

Agenda

1. Chair's welcome and introductions
2. To receive apologies for absence
3. To receive declarations of interest
4. Co-option of Member(s)
5. Police Matters
6. Update from Quintas Energy on Whitton Mawr Solar Farm
7. Vale of Glamorgan Council Matters
 - a. Licensing - Public Protection – Bonvilston Village Green
 - b. Disposal of small areas of land
 - c. Leisure Management Contract
 - d. Aberthin and Peterston Super Ely 20mph speed limit
 - e. Dropped kerbs
 - f. West-bound bus stop provision at Sycamore Cross for Cottrell Gardens
 - g. To receive a report of the Vale Council Member
8. To approve the Minutes of the
 - a. Meeting of June 7, 2021
9. Matters arising from the Minutes
10. To receive updates on completed & actioned projects
 - a. Community Engagement
 - b. Defibrillator maintenance
 - c. Employment review and employment of a new Clerk to the Council
 - d. Planters

Agenda (Continued)

10. Correspondence
11. Matters not on the agenda – Discussion Forum
12. Finances
 - a. Payments and income
13. To receive updates from other meetings attended
 - a. Community Liaison Committee
 - b. One Voice Wales Area Committee
14. To receive updates on planning matters
 - a. 1 Manor Cottages, Cowbridge Road, St. Nicholas
Work to trees – approved
 - b. Doghill Farm, Duffryn
Increased height of existing silage clamp – approved
 - c. Caia House – variation of condition – approved
 - d. The Cwm, Brook Lane, St Nicholas
Compliance with a rural occupancy condition (horse sanctuary) – refused
15. To consider Planning Applications & Matters
 - a. Whitton Mawr Solar Farm, Land East of Five Mile Lane
Variation of Condition 2 (time limit) from 25 years to 40 years of planning permission 2016/00950/FUL for [Variation/removal of Conditions 8, 9, 10, 13 & 17 of Planning Permission 2016/00794/FUL. 6MW solar PV array at land east of Five Mile Lane]
 - b. Church Hall House, Cowbridge Road, St. Nicholas
Replace secondary glazing on one ground floor side window
 - c. Carreg Las, Redway Road, Bonvilston
Variation of Condition 2 (Approved Plans) of Planning Permission 2020/00381/FUL: Proposed new dwelling.
16. To Consider
 - a. Approved list of Public Right Of Way furniture (gates) & financing of units and installation
 - b. Diversion of Public Right Of Way – Bonvilston 6, Pendoylan 3, 4 & 26
 - c. Highway obstruction under Section 130(6) of the Highways Act (1980)
 - d. Tools for clearance of Public Rights Of Way
 - e. Applications for financial assistance
17. Announcements
18. Next meeting

Part ii

The public and press may be excluded from the meeting during consideration of the following item(s) in accordance with section 100A(4) of the Local Government Act, 1972.

Cllr Ian Perry
Chair



Supporting Documentation

Police Matters

Incidents of note for June 2021

None received at this time

Vale of Glamorgan Council Matters

Licensing - Public Protection – Bonvilston Village Green

Following the Public Inquiry, in the opinion of the Inspector, it was not proven that the Bonvilston Village Green had been used “as of right”, rather than “as by right”. Officers, actively supported by the Chair, threatened the licencing committee with a judicial review should they vote to register the Village Green, and as a result the Village Green of Bonvilston is not registered, not protected for the well-being of future generations.

Disposal of small areas of land

The Vale Council has released for sale small parcels of land that were not suitable for development but were a continuing financial burden on the Vale Council due to their ongoing maintenance and security costs.

The Vale Council had received enquiries to acquire five of these small areas of land, from the residents of 37 and 39 St. David’s Crescent, Penarth and Bryn Awel, Crooked Shoard, High Street, Llantwit Major and 7 Great House Meadows, Llantwit Major which were currently managed by, or under the control of, the Education Department. The Council is able dispose of such land if it was no longer required for its operational purpose.



Leisure Management Contract

10-year contract signed in 2012.

Proposed extension of 7 years and 5 months approved by cabinet and to proceed subject to agreement being reached with Parkwood Leisure Limited, currently sub-contracted to Legacy Leisure.

20mph speed limits

A 20mph speed limit scheme for Aberthin is to be progressed on an experimental basis.

A similar scheme in Peterston Super Ely is also progressing due to the considerable work previously undertaken preparing the bid for this area to be included in the Welsh Government pilot project.

This area also boasted local ward Member and community support for such a scheme. Funding for this scheme would be taken from the Neighbourhood Services and Transport capital budget for 2021/22.

Why is there no money for Bonvilston?

Both schemes be introduced using experimental Traffic Regulation Orders where objections and comments as well as traffic data in respect to the schemes would be collected in their first 6 months of operation. This data would inform decisions taken on the permanency of the schemes or otherwise, within the 18 month trial periods and would be the subject of a future report to Cabinet.

Dropped kerbs

Work has begun on providing dropped kerbs. The works will take a fortnight.



Bus stop provision at Sycamore Cross for Cottrell Gardens



Is the Vale Council saying that people can walk up the hill, over the grass verge, or cross the road unprotected, or travel to the next bus stop and cross the A48 by the Red Lion compliant with the Equality Act?

Report from the Vale Council Member

Verbal



Correspondence

Royal National Institute for the Deaf – seeking volunteers for their Live Well with Hearing Loss project. Response – leaflet posted to Facebook.

Access to school playing field

Matters not on the agenda – Discussion Forum

This is an opportunity for residents to raise matters of concern to them. This replaces the section of the agenda formerly referred to as Public Participation, due to the changes coming in from the Local Government and Elections Act (Wales), 2021. Members of the public will be offered the opportunity to speak, briefly, on all agenda items.

Finances

Income

None

Payments

Locum Clerk agency fees:

Updates from other meetings attended

Community Liaison Committee Meeting Agenda items:

- Police Matters
- Fire and Rescue Service Matters
- Report on the Public Services Board Annual Report
- Observations by Independent Members of the Standards Committee

One Voice Wales Area Committee Meeting Agenda includes:

- Physical/Face to Face Meetings
- Achieving our low-carbon pathway to 2030
- Developments in Relation to Charters/Asset Transfers/Devolved Services



Planning Applications

[2020/00818/FUL](#) – Whitton Mawr Solar Farm, Land East of Five Mile Lane, Whitton Mawr

Variation of Condition 2 (time limit) from 25 years to 40 years of planning permission [2016/00950/FUL](#). See also: [2014/00798/FUL](#) and [2016/00794/FUL](#).

[2021/00791/FUL](#) – Church Hall House, Cowbridge Road, St. Nicholas

Replace secondary glazing on one ground floor side window



2021/00827/FUL – Carreg Las, Redway Road, Bonvilston

Variation of Condition 2 (Approved Plans) of Planning Permission
2020/00381/FUL: Proposed new dwelling

The applicant seeks to amend the design of the approved dwelling,
replacing the pitched roof with a flat roof.



North West Elevation
1:100 @ A3



North West Elevation
1:100 @ A3



South East Elevation
1:100 @ A3



South East Elevation
1:100 @ A3



Approved list of Public Right Of Way furniture (gates) & financing of units and installation

Guidance from the draft BS5709:2018 standards (the final version isn't available without payment)

Table 1 – Accessibility of structures conforming to BS 5709 on footpaths in least restrictive order

Section of BS 5709	Structure (in order of preference)	Performance
6.1	Gap	Allows all users
6.3	Gate unlatched, self-closing two way	Allows most users
6.3	Gate latched, non-self-closing, two way	Allows most users but can inhibit some, e.g. those with difficulty with dexterity and reach. This gate might with certain latches be less restrictive than one way unlatched non-self-closing gate
6.3	Gate, latched, Self-closing two way	Allows most users but can impede some, e.g. those with difficulty with dexterity and reach.
6.3	Gate, latched, Non Self closing one way	Allows most users, but can impede some users, e.g. those with difficulty with dexterity and reach.
6.3	Gate unlatched Self closing one way	Allows most users but can impede some users of mobility vehicles
6.4	Kissing gate, unlatched, dimensions that allow use by trampers and pushchairs	Allows most users but requires more effort than most gates
6.4	Kissing gate, latched dimensions that allow use by trampers and pushchairs	Allows most users but requires more effort than most gates and can impede some users, e.g. those with difficulty with dexterity and reach.
6.4	Kissing gate with RADAR bypass	Allows most users but requires more effort than most gates and can impede some users, e.g. those with difficulty with dexterity and reach, and those with pushchairs.
6.3	Gate, latched, Self-closing one way	Prevents most mobility vehicle users
6.4	Kissing gate, unlatched, dimensions insufficient for mobility trampers and pushchairs	Prevents some users (e.g. mobility vehicle users and pushchairs)
6.4	Kissing gate, latched, dimensions insufficient for mobility trampers and pushchairs	Prevents some users (e.g. disabled users) and is generally more difficult to use than latchless ones
7	Stile (existing and, exceptionally, new) with RADAR gate and dog gate	Allows most wheelchairs but not most pushchairs. Impedes or prevents the less able
7	Stile (existing and, exceptionally, new) with dog gate	Prevents most push-chairs and all wheelchairs. Impedes or prevents the less mobile
7	Stile (existing) without dog gate	Prevents most push-chairs and all wheelchairs. Impedes or prevents the less agile, and many dogs








The [Devon Countryside Access Forum](#) specifically recommend the Milton Keynes gate. The Paths For All [Design Guide](#) is also a useful resource. The Open Space Society produces an [Information Sheet](#).

Only two companies are making footpath access gates that meet accessibility requirements.

The most highly regarded access gate is the **Milton Keynes – 2 Way**



-  Access for pedestrians
-  Access for pedestrians w/ dogs
-  Access for medium mobility vehicles
-  Access for large mobility vehicles
-  Complies with BS5709:2018 specs

Manufacturers description:

Position of handle allows disabled ramblers to open the gate even more easily.

Galvanised steel mesh gate with integral H-frame posts, two-way self closing gate system, low easy latch, integral gate stops.

The EASY LATCH and self-closing two-way gate system enables this gate to be simply opened in either direction by pedestrian or users with mobility vehicles. The standard gate closing speed (approx 3 seconds) from fully open is very positive to take account of high winds or overgrown vegetation etc.

The controlled speed closing option (available only on the 1500mm gate) allows the gate to take up to 6 seconds to close according to local conditions and requirements.

As part of the revisions to improve gate accessibility you will note that the latch and catch parts of a gate that need to be operated in order to open it are now painted RAL 1021 Yellow. This colour shade is used to assist in identifying which parts are used to open a gate (especially useful for people that are visually impaired) and also show the options to open the gate using either the handle or being able to lift the auto latch pawl instead.

A stockproof handle is available to replace the easy latch handle



Where a wooden gate is preferable, there are a couple of options.

Denstone 2-Way Pedestrian Gate



-  Access for pedestrians
-  Access for pedestrians w/ dogs
-  Access for medium mobility vehicles
-  Access for large mobility vehicles
-  Complies with BS5709:2018 specs

A stockproof handle is available to replace the normal EASY LATCH handle

Aston Gate – 2-Way



-  Access for pedestrians
-  Access for pedestrians w/ dogs
-  Access for horse riders
-  Access for medium mobility vehicles
-  Access for large mobility vehicles
-  Complies with BS5709:2018 specs

Stock proof handle available



All of the above gates are acceptable, offering maximum accessibility. Metal is more robust and needs little or no maintenance – this importantly includes the self closing mechanism.

One-way opening versions are also available for where there are greater risks associated with livestock.

Stock proof handles



Stock proof handles require the user to first lift a sleeve before releasing the latch.

Natural Resources Wales has published “[By all Reasonable Means](#)”, which provides guidance. This states, “A review of practices for installing new countryside gates reveals the need to change the design specification to take account of the increased size of self-drive mobility vehicles.” This means that what has been sufficient in the past may no longer be adequate.

“As emphasised in BS5709 Gaps Gates and Stiles, this is not just about selecting the type of structure, but also how to make and install the chosen structure in the least obstructive way.”



Kissing Gates

Kissing gates are a barrier to users of mobility scooters. Even those that can accommodate mobility scooters often can't due to how they are installed. On routes where accessibility is being maximised, kissing gates should not be used.

It is preferable to use two standard gates with an "airlock" in between, rather than a kissing gate. If a kissing gate is used, a second gate locked by a RADAR key should be considered.

Woodstock – Large Mobility Kissing Gate




-  Access for pedestrians
-  Access for pedestrians w/ dogs
-  Access for medium mobility vehicles
-  Access for large mobility vehicles
-  Access for mobility vehicles w/radar key
-  Complies with BS5709:2018 specs

If a metal kissing gate can't be installed, as a last resort, an Oxford kissing gate may be considered.

Oxford – Large Kissing Gate

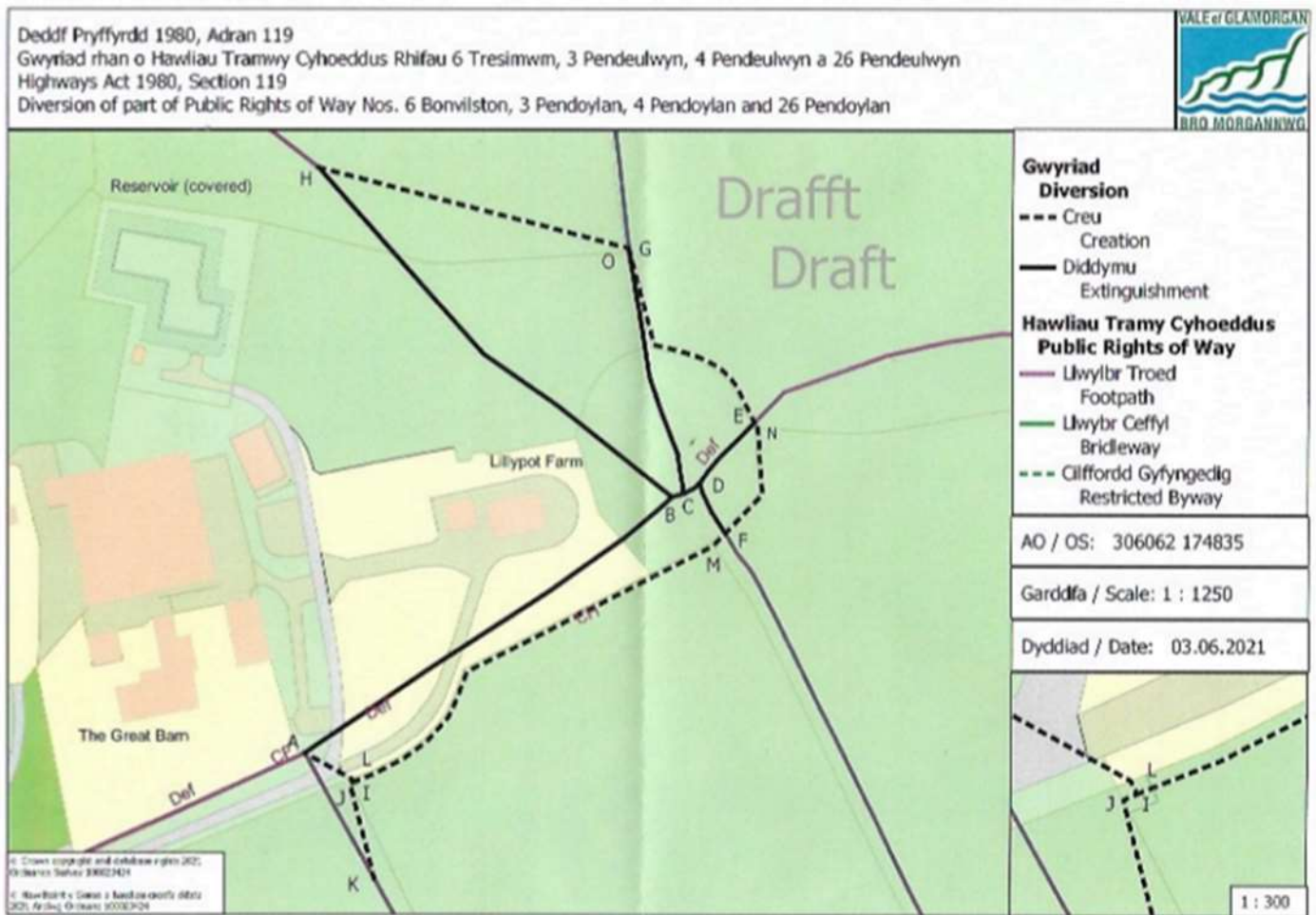


-  Access for pedestrians
-  Access for pedestrians w/ dogs
-  Access for medium mobility vehicles
-  Access for large mobility vehicles
-  Complies with BS5709:2018 specs

Other gates and kissing gates are BS5709 compliant, but do present a barrier to potential users of a Public Right Of Way.



Diversion of part of Public Rights Of Way – Bonvilston 6, Pendoylan 3, 4, & 26



The Vale Council will provide new pedestrian gates and kissing gates to BS5709 – however, some pedestrian gates and particularly kissing gates to BS5709 exclude some people – particularly those with larger mobility scooters.

Points J and L – pedestrian gates

Points M, N, & O – kissing gates

The landowner is open to having self-closing pedestrian gates in place of kissing gates.

F – N – E is route Bonvilston 6.

The kissing gates generally used by the Vale Council have been a barrier to people with certain disAbilities.





Highway Obstruction Under Section 130(6) of the Highways Act (1980)

Asserting public highway rights – by [Alan Timms](#)

As the local highway authority, a county council's delivery of the service to the public is subject to two basic statutory duties contained within the Highways Act 1980, firstly to maintain those highways which are "adopted" that is maintainable at the public expense (section 41) and secondly, in respect of all highways, to assert and protect the rights of the public to the use of all highways for which they are the highway authority (that is all except trunk roads), to prevent, as far as possible, the stopping up or obstruction of those highways; and to prevent any unlawful encroachment on any roadside waste composed in a highway (section 130).

The duty to assert public rights to use any highway includes institution of proceedings as deemed necessary. Indeed a parish council can represent to the highway authority that a highway has been unlawfully stopped up or obstructed and the highway authority are then placed under a further duty to act unless satisfied that the representation is incorrect.

The first leg of this duty requires an understanding of what the public's rights are. In summary they are:

- along a footpath and a footway (pavement) to a road – pedestrian usage only;
- along a bridleway – on foot, on horseback or leading a horse, and (since 1968) cycling;
- along a road, on foot, horseback, cycling, and with vehicles, both motorised, and non-motorised.

The case of DPP v Jones [1999] 2.W.L.R 625 had to determine what the rights of passage were and acts incidental to that right of passage. It was concluded that: "the public highway is a public place which the public may enjoy for reasonable purpose, providing the activity in question does not amount to a public or private nuisance and does not obstruct the highway by unreasonably impeding the primary rights of the public to pass and repass".

From this is established the right of peaceful assembly on the highway. As was further stated: "the particular purpose for which a highway may be used within the scope of the public's rights of access includes a variety of activities which are consistent with what people reasonably and customarily do on a highway".

The above issue was the subject of one of the most recent high profile cases, that relating to the protest camp set up in St Paul's Churchyard in London in October 2011. This involved a large number of tents, some 150 to 200 at the time the matter came to court in December 2011.



In the relevant case, *City of London v Samede and others* [2012] EWHC 34 (QB), the City of London Corporation sought possession of the highway and other open land in the churchyard which had been occupied as a peace camp. The areas of highway involved were largely pedestrian areas and no licence or consent to occupy the land had been granted. The court recognised that there is no statutory right nor at common law had there ever been a right to occupy, control to take possession of highway land from the highway authority.

As the court summed up when granting the Corporation's claims: "the extent and duration of the obstruction of the highway and the public nuisance inherent in their obstruction would itself warrant making an order for possession. So too would the effect of the camp on the human rights of worshippers at the cathedral, so would the effect on visits to the cathedral"

An earlier case with a similar outcome was that of *The Mayor of London v Hall and others* [2010] EWHC 1613 (QB) where repossession was granted in respect of Parliament Square Garden across which ran a public highway where a camp was set up protesting against among other things the Afghan and Iraqi wars and worldwide environmental issues.

At the beginning of this article I mentioned the two fundamental duties to which the highway authority is subject. The case of *Ali v The City of Bradford Metropolitan District Council* [2010] EWCA Civ 1282 concerned whether a highway authority could be liable, by way of an action for nuisance and a breach of the statutory duty to assert and protect public rights, where an accident had been suffered by a pedestrian using a public footpath slipping on an accumulation of mud and debris. It was decided that an individual had no right to sue in tort and that the duty in section 130 of the Highways Act 1980 (that concerned with asserting and protecting the rights of the public to the use and enjoyment of a highway), was not the appropriate cause of action but rather sections 149 and 150 of that Act, which is covered by the group heading "obstructions of highways and streets".

Sections 130A to 130D of the 1980 Act provide "a calibrated procedure" for enforcement of the duties under section 130 whereby a person who claims that a highway has been obstructed may serve notice on the highway authority requiring it to secure the removal of the obstruction and if the highway authority fails to do so the complainant may take the matters to a magistrates' court who may make an order requiring the highway authority to take such steps as may be specified for the removal of the obstruction.

The case of *Herrick v Kidner* [2010] EWHC 269 (Admin) concerned a notice served on Somerset County Council for the removal of large gates across a footpath. The Crown Court had made an order supporting the removal of the gates and middle gate pillar but not the entire structure but it was considered that in allowing the retention of



the outermost pillars and part of a fly wall an irrelevant consideration had been taken into account.

On appeal, the Administrative Court decided: “any structure erected within the legal extent of the footpath, and which prevents public passage or the enjoyment of amenity rights over the area of its footprint, significantly interferes with the exercise of public rights of way. The Crown Court should have made that order in relation to the totality of the structure obstructing the full extent of the footpath”.

The case of *Ernstbrunner v Manchester City Council* [2009] EWHC 3293 (Admin) also concerned the removal of a gate from a footpath. Like Herrick this case was also concerned with the Council’s response to a notice served upon them requiring removal of an obstruction. In this case a notice was duly served by the Council requiring removal of the gate but it was not removed. It turned out that the gate, on the interpretation of the evidence by the Crown Court, was not on the line of the footpath as recorded on the definitive map and statement. No order was made about against the highway authority on that basis.

Legislation gives the highway authority involvement in and generally control over all structures introduced into or activities undertaken within the highway. Discharge of the statutory duty which arises in asserting public rights does therefore presuppose that the appropriate controls are exercised and information about the extent of any highway in respect of which the duty falls to be discharged is on a record properly maintained and accurate.

From the [Open Space Society](#)

1.1 Highways, which include footpaths, bridleways, restricted byways and byways open to all traffic, are protected by legislation under the Highways Act 1980. Every Highway authority has a duty, set out under section 130 of the Highways Act 1980, 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 that forms part of it, and to prevent, as far as possible, the stopping up or obstruction of the highways [in their area]

1.2 The offence is committed by whoever obstructs the highway, but only the highway authority has the power to take steps for the removal of the obstruction. However, legislation enables you to take steps to make the highway authority carry out its duty. The action that a highway authority can take differs depending on the type of obstruction.



1.3 An obstruction is something lying or placed across the path that physically prevents you from using the path such that, if the obstruction were removed, the path would once again be useable. Please note that this is different from 'out of repair', which means that the surface of the path would need be reinstated before it could be properly used. See section 56 information sheet. There is also a difference in how the law deals with vegetation which:

- has been deliberately planted (which counts as 'wilful' obstruction), such as a crop, or
- is overhanging a highway, such as natural growth from trees or hedges, or
- is naturally growing up through the surface of the highway.

1.4 There are a number of different types of obstruction specifically referred to in the legislation. In certain circumstances, something that you might consider to be an obstruction may have what is called 'lawful authority'. This means that the person causing the obstruction is clearly authorised by law to obstruct the highway. This could be by, or under, an Act of Parliament, or where the highway has been dedicated subject to such a limitation or condition. For example:

- a landowner who wishes to keep livestock in a field crossed by a footpath or bridleway can have a gate on the path authorised by the highway authority (i.e. an 'authorised gate') for keeping stock in the field[.
- the structure has been present since the time the path came into existence.
- the highway authority may have erected barriers for safety reasons.

1.5 Since a change in the legislation in 2004, members of the public in England and Wales have been able to take steps to require highway authorities to carry out their duties in relation to certain types of obstruction. The procedure is given in section 130A to 130D of the Highways Act 1980. This is commonly referred to as the section 130A ('s130A') process.

1.6 If the authority fails to take action on your initial complaints about an obstruction, you can make an application to the magistrates' court. This process would be for civil, not criminal, proceedings. Please note that there are potential costs involved where cases are taken to the magistrates' court. More details are given in the section on costs below. These costs relate to both the making of an application, and the payment of costs by the losing party to the winning party awarded by the magistrates. The cost of making an application to the magistrates' court in January 2020 was £226. If the application was contested by the highway authority, a further fee of £567 would be payable by you, giving a total cost of £793. While it has not yet been tested, there is a good argument that one court fee could relate to several different obstructions.



The Open Space Society has [published Information Sheet no C25, Parish councils: dealing with highway obstructions under s.130\(6\) of the Highways Act 1980](#)

Under s.130(6) of the Highways Act 1980:

‘If the council of a parish or community or, in the case of a parish or community which does not have a separate parish or community council, the parish meeting or a community meeting, represent to a local highway authority—

(a) that a highway as to which the local highway authority have the duty imposed by subsection (3)2 above has been unlawfully stopped up or obstructed, or (b) that an unlawful encroachment has taken place on a roadside waste comprised in a highway for which they are the highway authority, it is the duty of the local highway authority, unless satisfied that the representations are incorrect, to take proper proceedings accordingly and they may do so in their own name.’



Footways along the A48, June 2021



