

**HERTFORDSHIRE COUNTY COUNCIL  
ENVIRONMENT AND COMMERCIAL SERVICES DEPARTMENT**

**STAGE 2 COMPLAINT INVESTIGATION REPORT**

Author: Allison Short – Customer Services Manager  
Directline: [REDACTED]  
Email: [REDACTED]

**1.0 Purpose of Report**

1.1 To detail the findings, conclusions and recommendations following the investigation into the complaint from [REDACTED]  
[REDACTED]

**2.0 Scope of the Complaint**

2.1 The complaint relates to [REDACTED]  
[REDACTED] in relation to work undertaken by [REDACTED] on [REDACTED] Road. [REDACTED]  
[REDACTED]. [REDACTED] Road is a highway not maintainable at public expense.

2.2 [REDACTED] specific complaints are:





### 3.0 Methodology of Investigation

3.1 I have undertaken my investigation using any background papers and files available to me. I have interviewed Peter Wright (Assistant District Manager) and Stephanie Stammers (Solicitor). I have also met with [REDACTED]. I have obtained information from the Highway Network Support Services Team.

### 4.0 Chronology

4.1 Detailed below is a summary of events/correspondence.

4.2 **November 2009 – Visit** by Peter Wright and Terry Buck (Area Engineer) to [REDACTED] Road.

4.3



Peter Wright confirms that [REDACTED] Road is considered to be highway albeit not maintainable at public expense. Any work to be carried out on it or any objects placed on it should have the approval of the highway authority.



[REDACTED]

4.4 **12 January 2010** – Email to Stephanie Stammers from Peter Wright.

[REDACTED]

4.5

[REDACTED]

4.6

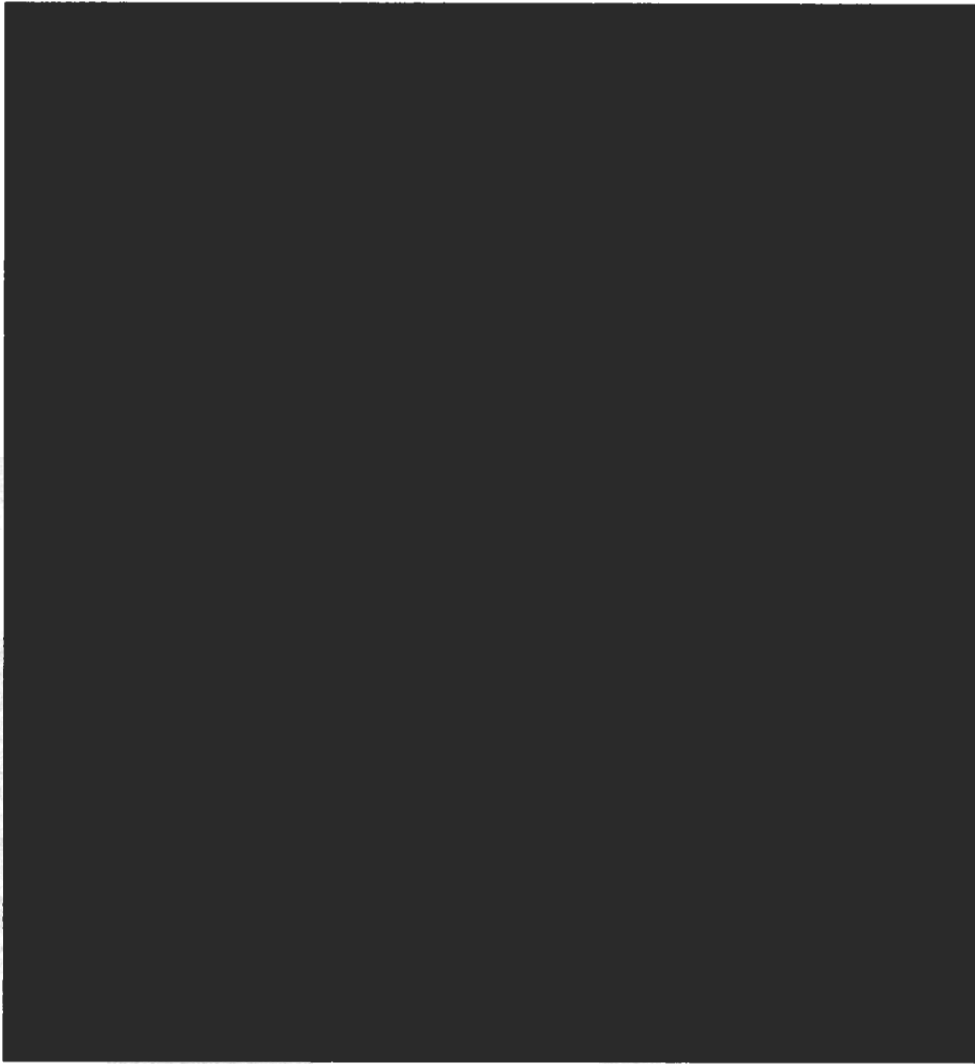
[REDACTED]

4.7

[REDACTED] Email from Stephanie Stammers [REDACTED]  
Stephanie explains that the Council's position is that [REDACTED] Road is a highway although not maintainable at public expense. As a highway, the public have the right to pass and re-pass along [REDACTED] Road. The Highways Act places a duty on the County Council to assert and protect the rights of the public to the use and enjoyment of [REDACTED]  
[REDACTED] She clarifies that planning regulations do not allow things to be deposited on the highway without the appropriate licence from the highway authority. She also confirms that Section 66(2) refers only to the highway authority and so cannot apply to [REDACTED]'s actions. The County Council is trying to establish the owner of the carriageway of [REDACTED] Road. [REDACTED]  
[REDACTED] cannot be classed as maintenance or improvement.

4.8

[REDACTED]



4.9 **24 February 2010** – email from Stephanie Stammers to [REDACTED]. She asks [REDACTED] to provide copies of the relevant evidence that [REDACTED] has referred to. She also clarifies that Section 66(2) of the Highways Act only empowers the highway authority and not any other body or individual.

4.10





- 4.11 [REDACTED] – Online complaint form submitted by [REDACTED].
- 4.12 **3 March 2010** – Email from Allison Short to [REDACTED] acknowledging receipt of [REDACTED] complaint.
- 4.13 **19 March 2010** – Email from Highway Network Systems Team to Stephanie Stammers. It states that [REDACTED] Road was shown unshaded on Inland Revenue map prepared in accordance with The Finance Act (1909-1910) Act and based on the 1898 Ordnance Survey map, which is strong evidence that it was considered to be highway at that time.
- 4.14 **22 March 2010** – Meeting between Allison Short, Stephanie Stammers and Peter Wright. It was explained that the enforcement action had been taken as a resulted of complaints from two people.



Peter explained that he met with [REDACTED] on site. [REDACTED]

Stephanie explained that an obstruction on a highway can be an example of a nuisance. The word "nuisance" was used in the notice as that is the word used in Section 149 of the Highways Act. [REDACTED]

[REDACTED]. She confirmed that the County Council does have the right to remove objects if they are causing a nuisance.

It is reasonable for the highway authority to expect frontagers to seek approval for any work that they do on the highway so that the right to pass and re-pass is not interfered with.

Stephanie re-affirmed that she did not consider the work carried out as maintenance. [REDACTED]  
The surface laid down is not suitable for walking on.

Stephanie confirmed that the road is shown on the 1898 Ordnance Survey Map as highway and this is supported by the Finance Act 1910.

4.15

- Meeting between Allison Short and

[REDACTED]

[REDACTED]

[REDACTED]



██████████ referred to a number of documents that supported ██████████ position as follows:

- Court case (Cowan vs Peak District) which was won on appeal on the basis that alterations can take place providing there is no alteration to the line of the road.
- House of Commons Library – document Roads:Unadopted which confirms that they can maintain the road and regulate parking.
- The Dray and Weston Apple Farm, Nutbourne



4.19 **25 March 2010** – Discussion between ██████████ and Allison Short. ██████████ confirmed that the plan obtained by ██████████ from HALS is an older version of the Ordnance Survey plan. The current plan does not show a footway. She could not explain why the plan had previously shown a footway and now did not. That would be a matter for Ordnance Survey.

The basis for confirming whether a road is highway or not derives from the Finance Act 1910. For the purposes of taxation, property owners were required to identify the property in their possession based on the plans available at that time. Each property had a specific reference number and was 'coloured' on the plan. Most roads were unclaimed. Roads that remained 'uncoloured' were

deemed to be highway. [REDACTED] Road was uncoloured on the plans and so was considered to be highway. Most roads were subsequently adopted by the highway authority. [REDACTED] Road was never adopted although it remains highway.

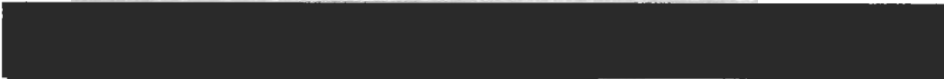
## 5.0 Conclusions

5.1 There are eight parts to [REDACTED]'s complaint and I will deal with each separately:

5.2



5.2.1



[REDACTED]. The County Council is required to use the wording contained within that Section to serve the notice. Section 149 refers specifically to things deposited on the highway "as to constitute a nuisance". An obstruction on the highway is an example of a nuisance. I do not consider that officers have used different wording as a "fishing expedition" against [REDACTED] but merely in keeping with the wording used in the Act.

5.2.2 The County Council's policy document "Enforcement with regard to Obstructions on the Highway" describes a nuisance as follows:

"(a) Danger meaning that users of the highway are imperilled; or  
(b) An annoyance which means that use of the highway is rendered more awkward or less enjoyable or both of these things"

5.2.3 Officers consider that point (b) above applies to the deposited material and bollards. As highway authority, the County Council has a statutory duty imposed under Section 130 of the Highways Act 1980 to assert and protect the rights of the public to the use and enjoyment the highway. This includes dealing with nuisances on the highway.

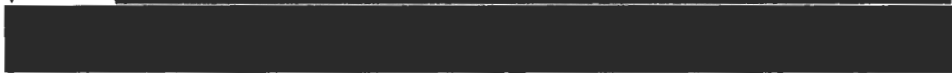
5.2.4 Section 149 of the Highways Act 1980 does give the highway authority the right to obtain an order from the magistrates' court allowing it to remove and dispose of things causing a nuisance on the highway.

5.2.5 I do not uphold this element of the complaint.

5.3



5.3.1 I do consider that the letter [REDACTED] stating that [REDACTED] needs approval from the highway authority to be a little strong. There is no absolute requirement for a frontager to obtain approval to undertake works on a private street. Nevertheless, it does seem reasonable for a frontager who is carrying out maintenance or repairs to consult with the highway authority to ensure that what they are proposing does not interfere with the public's right to pass and re-pass. [REDACTED]



5.3.2



[REDACTED] It is the Highway Authority that has the duty to protect and assert the rights of users. That duty does not fall on other people and so [REDACTED].

5.3.3 I do not uphold this element of the complaint.

5.4



5.4.1 According to County Council records, [REDACTED] Road is a highway that is not maintainable at public expense. The County Council has used the Finance Act map to arrive at this conclusion. The Finance Act map is rebuttable but the burden would be on [REDACTED] to rebut it. The County Council is entitled to rely on the information contained in the Finance Act map unless and until a third party proves otherwise.

5.4.2 As such, the County Council does have rights (as highway authority) to deal with things that it considers are causing a nuisance on a public highway. The County Council considers that [REDACTED] [REDACTED] Road [REDACTED] and it has a statutory duty to deal with them.

5.4.3

[REDACTED] private rights can run alongside public rights but for the purposes of the law, the public rights are superior.

5.4.4

[REDACTED]

5.4.5 I do not uphold this element of the complaint.

5.5

[REDACTED]

5.5.1 The type of material used or deposited on the highway is irrelevant. If the material is deemed to be causing a nuisance then the highway authority can require its removal.

5.5.2 I do not uphold this element of the complaint.

5.6

[REDACTED]

5.6.1 As explained above, [REDACTED] is considered to be a highway albeit not maintainable at public expense. As such, our statutory duty is slightly different to that on a highway that is maintainable. Nevertheless, we still have a legal duty to protect and assert the rights of the public to use [REDACTED] Road. This legal duty is in addition to our requirement to maintain the highways that are maintainable at public expense.

5.6.2

[REDACTED]

Officers should investigate these other works and, where necessary, take action to assert the rights of the public. [REDACTED]

[REDACTED]

Again, officers should inspect [REDACTED] with a view to undertaking whatever works they feel is necessary.

5.6.3 I do not uphold this element of the complaint.

5.7

[REDACTED]

5.7.1 The County Council takes complaints seriously and complaints have been received [REDACTED]. The County Council believes that [REDACTED] Road is a highway not maintainable at public expense and, unless proven otherwise, it has a duty to assert the rights of the public to use it.

5.7.2

[REDACTED]

[REDACTED]

[REDACTED] A public authority cannot put restrictions on what a person does with their own property unless there is a law that allows them to do this and there is good reason for doing so. [REDACTED]

[REDACTED]

5.7.3 I do not uphold this element of the complaint.

5.8

[REDACTED]

5.8.1

[REDACTED]

5.9

[REDACTED]

5.9.1

[REDACTED]

[REDACTED]

5.9.2 I do not uphold this element of the complaint.

**6.0 Recommendations**

6.1 Officers investigate [REDACTED]  
[REDACTED] and, where necessary, take appropriate action.

6.2 Officers inspect [REDACTED]  
arrange for any [REDACTED] work that is considered necessary.

Allison Short  
15 April 2010