

Title: Dealing with rights of way problems at equestrian establishments and other places where horses are kept (England and Wales)

Reference: CAM010



Introduction

This Fact Sheet has been produced as a result of a 2011 General Council motion which called for guidance to be produced to help volunteers deal with problems on public rights of way in the vicinity of equestrian establishments. The general legislation which protects public rights of way obviously applies to these paths in exactly the same way in which it applies to all other paths but in this note we have attempted to address the specific issues highlighted by the proposers of the motion.

Planning issues

Under UK legislation, a horse is an agricultural animal if it is used to farm agricultural land or farmed for meat or hides. Most horses which walkers encounter will not therefore be classed as agricultural animals but they may be part of a non-agricultural business enterprise such as riding stables, livery stables, or a pony trekking business. Some horses are kept in a purely personal capacity for riding and as pets.

Development is defined at section 55 of the Town and Country Planning Act 1990 as “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land” and section 57 of the Act requires that, subject to certain exceptions, planning permission must be obtained before development is carried out. Agricultural businesses benefit from rights to change the use of their land, in some circumstances, without the need for express planning permission, including rights for temporary uses. For example, most agricultural buildings can be constructed without express planning permission (although details of the scheme may need to be approved by the local planning authority). These concessions are called permitted development rights. However, because most horses in this country are not classed as agricultural animals it is possible that any facilities built to house them, or otherwise associated with them, will need planning permission. It is not possible to say that a building for horses in a non-agricultural capacity will definitely need planning permission because certain domestic outbuildings are considered to be permitted development not requiring an application for planning permission, provided that various conditions are met. The rules governing outbuildings apply to sheds, greenhouses, garages, swimming pools, kennels, enclosures and many other kinds of structure for a purpose incidental to the enjoyment of a dwelling house. “Incidental to the enjoyment of a dwelling house” includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the house. A stable or shelter for domestic horses would fall into this category. Note that outbuildings are not permitted development within the grounds of a listed building, and that on designated land (national parks, the Broads, AONBs, conservation areas and World Heritage sites) additional tests apply.

What you should do

If you suspect that any development has, or is, taking place without planning permission, or permitted development rights, then you should always report it to the local planning authority (this will be the district council or the unitary authority). The authority will have enforcement officers whose job it is to investigate any breaches in planning control.

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The grant of planning permission for development of land over which there is a public right of way does not of itself constitute authority for interference with that right of way, or for its closure or diversion. The procedures for closing and diverting paths to enable developments to proceed are described in details on pages 196–202 of the ‘blue book’. If a development has been completed, then the Town and Country Planning Act provisions for closing and diverting paths are not available and the provisions of the Highways Act 1980 have to be used instead. Measures to be taken when a path has been obstructed by a development or horse-related activity are discussed below.

Obstruction of paths with locked gates, electrified tapes, wires or mesh, post and rail fences, etc which divide fields into small paddock units

Obstruction of the highway is a crime at common law as a form of public nuisance, and a crime by statute under s.137 of the Highways Act 1980 which provides that “If a person, without lawful authority or excuse, in any way wilfully obstructs free passage along a highway he is guilty of an offence ...”. The subject of obstructions is discussed in detail in Chapter 9 of the ‘blue book’ but there is little doubt that tapes (electrified or otherwise) or any other kind of fencing across the line of a public right of way would constitute an obstruction. If a landowner erects temporary electric fencing for the purpose of controlling grazing, and provides an insulated handle by which the wire may be moved to enable users to pass through safely and without inconvenience it may be considered that the matter does not need to be reported to the relevant highway authority (the unitary authority or county council) but otherwise obstructions should always be reported. Note that the provision of a stile or gate on the line of a right of way obstructed by such fencing is not sufficient action by the person responsible to avoid committing the crime of obstructing the highway. A stile or gate erected other than upon dedication of the way or without the consent of the highway authority is a nuisance or common law or an unlawful obstruction. Under s 147 of the Highways Act 1980, a highway authority may authorise the erection, by the owner, lessee or occupier, of a stile or gate to prevent the ingress or egress of animals on land which is being used, or being brought into use, for agriculture or forestry, or for the breeding or keeping of horses.

The British Horse Society has its own leaflet on electric fencing which can be accessed via its website at http://www.bhs.org.uk/About_Us/Free_Leaflets/Rights_of_Way.aspx Whilst this concentrates on the dangers which can be caused to horses by electric fences in the vicinity of bridleways, it points out unequivocally that “Electric fencing across a public right of way is an obstruction (Kent CC v Neeson (QBD) (1996)). The highway authority has a duty to prevent and remove obstructions.”

What you should do:

- Report any obstruction of the highway (including temporary electric fencing where no safe means of crossing has been provided, unauthorised stiles and gates, and any buildings) to the highway authority.
- If the highway authority takes no action then consider serving Form 1 of the section 130A procedure on the highway authority to enforce its duty to keep the highway free from obstructions (see

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http://www.ramblers.org.uk/rights_of_way/take_action/get_an_obstruction_removed.htm for details but note that the procedure cannot be used for all kinds of obstruction: contact a member of staff for advice if you have any doubts).

- If the authority takes no action and s.130A is not applicable then report the matter to the locally elected member of that council and contact the parish, town or community council for assistance (remember that a highway authority is obliged to take particular notice of a complaint from a parish, town or community council by virtue of s 130(6) HA 1980), or consider a complaint to the Local Government Ombudsman (<http://www.lgo.org.uk/>).
- If you have direct contact with the landowner concerned, draw their attention to the BHS leaflet.
- Report the problem to the BHS (The British Horse Society, Abbey Park, Stareton, Kenilworth, Warwickshire, CV8 2XZ; 02476 840515). If the problem is on land belonging to one of their members then they will investigate it.
- Discuss with staff at central office or Ramblers Cymru the possibility of bringing a private prosecution for obstruction.

Removal of waymarks and signposts

S 131(2) of the Highways Act 1980 makes it an offence to pull down or obliterate a traffic sign or direction post. Authorised officers of local authorities have the power under anti-social behaviour legislation to issue fixed penalty notices to anyone found to be committing the offence where this takes the form of obliterating the sign.

What you should do

Report any instances of the removal of official signage to the highway authority.

Dangerous horses

If a horse injures a person lawfully using a highway the keeper of the horse is liable, provided he knew that the horse was likely to cause the injuries suffered. Thus in *R v Dart* (1865) Dart turned his horse, which he knew to be vicious, onto a common over which there was an unfenced public path. An eight-year-old child was kicked by the horse and killed and Dart was prosecuted for manslaughter and convicted. The judge said "I entertain no doubt that the turning of a horse on to a common across which there is a public path, with a knowledge of its vicious propensities, is an unlawful act, and exposes the person doing it to a charge of culpable negligence."

This principle is enshrined in s 2 of the Animals Act 1971 which makes the keeper of an animal liable for damages if it injures another person provided that the keeper was aware of the animal's tendency to cause injury. (But note that in the case *Mirvahedy v Henley* (2003), where a car driver was injured by a collision with a horse that had panicked for an unknown reason, the owners of the horse were held liable; this ruling has led for a call for new legislation on this issue although, as yet, none has been forthcoming.) Where horses are being kept as part of a business then the Health and Safety at Work Act 1974 will also apply. Section 3 of the Act places an obligation on employers and self-employed persons not to put at risk the health and

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safety of persons not in their employment. Breach of the duty is an offence so a person running a business who placed a horse which he knew to be dangerous in a field crossed by a public right of way would be liable to prosecution under that Act.

A leaflet, *Stallions on bridleways* can be accessed via the British Horse Society (BHS) website at http://www.bhs.org.uk/About_Us/Free_Leaflets/Rights_of_Way.aspx

Whilst the emphasis in this publication is on the problems which can arise for horse riders when a stallion (a male horse which has not been castrated) is kept in a field or enclosure crossed by a bridleway, there is a useful note which says that action in respect of a "statutory nuisance" has been taken against the owner of a stallion under the Environmental Protection Act 1990. A bridleway had been denied to riders for many years because of the presence of a stallion in a field crossed by the bridleway. The highway authority, which considered it had no powers in the matter, passed the case to the relevant district council which was empowered to take action under the Act. The problem was solved in a week, following a letter threatening action under the Act. Matters that constitute statutory nuisances for the purpose of the Act include any animal kept in such a place or manner as to be prejudicial to health or a nuisance.

In the same leaflet, the BHS recommends owners of stallions not keep these animals in fields crossed by bridleways.

What you should do

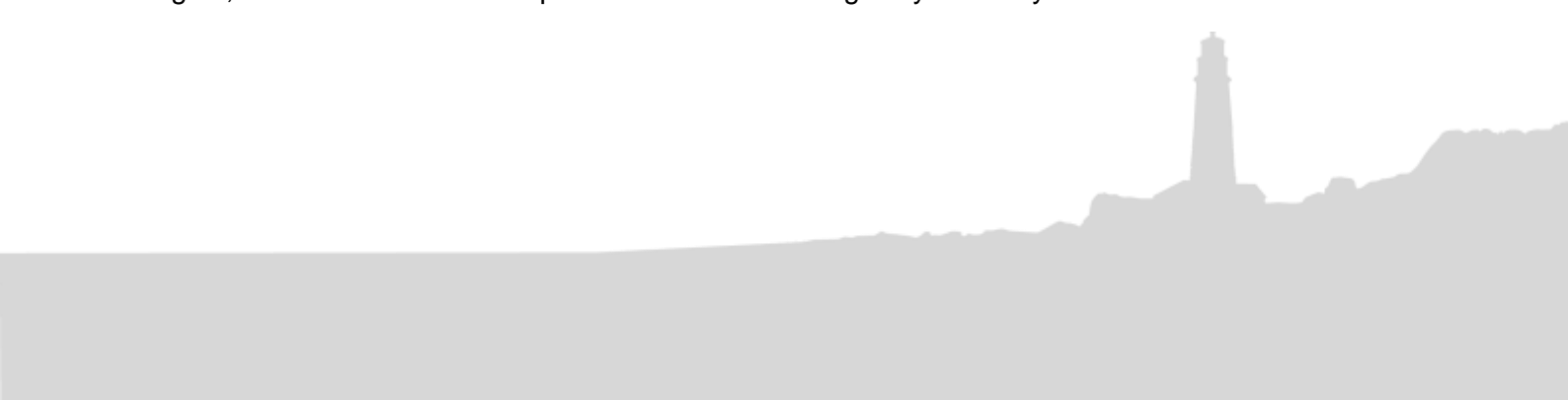
Report any horses kept in a field or enclosure crossed by a public right of way which appear to be behaving in a dangerous manner to the highway authority and the Health and Safety Executive (details of local offices should be available on-line and in local telephone directories). You should consider involving the district council (or unitary authority) if the way in which horses are being kept amounts to a nuisance to users of a right of way.

Intimidation of users

Occasionally horses may effectively prevent use of a right of way by running around users and behaving in an over-excited and threatening manner. This may constitute public nuisance at common law, since free use of the way is being impeded. A public nuisance is some matter which materially affects the reasonable use and convenience of a class of Her Majesty's subjects who come within the sphere or neighbourhood of its operations. The main duty of securing the abatement of a nuisance rests with the highway authority under s 130 HA 1980. A private individual cannot bring an action to abate a nuisance unless he has suffered personal injury or loss.

What you should do

Again, the matter should be reported to the relevant highway authority.



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Further information

You may find the following resources useful when looking for further information on this issue: 'Rights of Way, A guide to law and practice,' (4th Edition), John Riddall and John Trevelyan, published by The Ramblers and The Open Spaces Society, 2007.

The Ramblers website at

http://www.ramblers.org.uk/rights_of_way/knowledge_portal/rights_of_way_law/basics_of_row_law.htm

The British Horse Society website at

http://www.bhs.org.uk/About_Us/Free_Leaflets/Rights_of_Way.aspx

