



Countryside Access Team

Enforcement Policy:

Obstructions (temporary and permanent) and issues relating to farming (ploughing and cropping) and materials deposited on the highway



Enforcement Policy

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Nothing in this policy limits or prevents any reasonable enforcement action or legal proceedings which the Council considers is appropriate where a public right of way is wilfully obstructed.

Any deviation from this policy must be requested in writing and approved by the Assistant Director - Planning and Development.

1. Introduction

- 1.1. The Countryside Access Team has identified it an opportune time to review a number of policies, guidance notes and working practices used within the Team. The former Bedfordshire County Council's "legacy" policies are out of date and not aligned with our Outdoor Access philosophy, whilst legislation and working practices are overdue a revision. This policy is one of a coherent suite of policies and practices which link into the themes within the Outdoor



Access Improvement Plan¹ and are founded on the core values of openness and least restrictive access to the network.

- 1.2. The Definitive Map and Statement are Central Bedfordshire Council's legal record of public rights of way: footpaths, bridleways, restricted byways, and byways open to all traffic. The map informs landowners and tenants whether a public right of way crosses their garden or paddock, or runs around their field or through their farmyard. These routes are as much part of the greater public rights of way network as our country roads and motorways and enjoy equal protection under the law. Members of the public have the right to use these routes when they wish and should expect to be able to use them freely and without interruption or obstruction.
 - 1.3. The requirement that public rights of way are available for public use is a general duty of both the landowner² and this Council³. Where rights of way are obstructed the Council has a duty to protect the public's right to use the path or way and, where necessary, to seek⁴ the removal of the obstruction.
 - 1.4. Section 130 of the Highways Act 1980 imposes a duty on Central Bedfordshire Council, as the Highway Authority, "*...to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority...*". The High Court case of *Regina v Surrey County Council (ex parte Send Parish Council) 1979*, mandates that the Council, as highway authority, carries out its duty in a reasonable and appropriate manner to facilitate use of the route by those legally entitled to do so. Central Bedfordshire Council has discretion in how and the extent it discharges its duty.
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¹ At the time of writing (May 2011) the Outdoor Access Improvement Plan is being re-written.

² Highways Act 1980, Section 137 *and other sections*

³ Highways Act 1980, Section 130.

⁴ Central Bedfordshire Council may decide not to seek the removal of an obstruction in circumstances where doing so could expose members of the public using the path to other clearly identified hazards.

2. Obstructed paths not subject to a Public Path Order application or confirmed Definitive Map Modification Order

- 2.1 Where paths are obstructed by temporary structures, or by structures that have been constructed since the paths were recorded on the Definitive Map, the presumption will be that the Council will seek the removal of the obstruction using its powers under the Highways Act 1980⁵.
 - 2.2 Where paths are obstructed by long-standing or permanent features and consequently the obstruction could not be reasonably or practicably removed by means of enforcement action, the Council will consider either making a Council-generated Public Path Diversion Order or a Public Path Extinguishment Order to resolve the issue.
 - 2.3 Where the Council considers making a Public Path Diversion Order, it will require the landowner to enter into a permissive path agreement to provide a suitable alternative route for members of the public to use until any Order is confirmed and certified. As part of the agreement, the landowner will be required to defer all Council costs associated with drafting the agreement and maintaining the permissive route.
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⁵ The Highways Act 1980 empowers the Council to remove any obstructions, including fencing, gates, vegetation and crops which prevent or impede use of a public right of way.

3. **Obstructed paths subject to an application for a Public Path Order or Definitive Map Modification Order which would resolve the obstruction issue**

General requirements

- 3.1 Keeping paths open and available for public use is a general and on-going duty of the Council. We can see no justification in directly linking the availability of the existing path with the processing of an application to divert or extinguish it.
- 3.2 The decision as to whether enforcement action is appropriate, and whether an application to divert or to extinguish a path is appropriate, should be made by the Rights of Way Team Leader⁶ on the merits of each individual case.
- 3.3 All paths should be open and available for public use until such time as an extinguishment or diversion order is made and confirmed (and where necessary, certified). The Case Officer may, however, waive this requirement where he or she deems it appropriate having regard to all the circumstance of the particular case. This is likely to be more frequently the case with Council generated schemes.
- 3.4 Where the legal line of the path is obstructed by temporary structures that can be removed the applicant will be required to open up the path on the legal line until an Order has been confirmed and certified.

Requirements for obstructed paths to be diverted under Section 119 of the Highways Act 1980

- 3.5 The requirements relating to a Public Path Diversion Order application affecting an obstructed path are as stated in the Council's **Applications Policy**. Namely:
 - 5.24 *The presumption shall be that all paths that are the subject of an application will be open and available for public use until such time as an extinguishment or diversion order is made and confirmed (and where necessary, certified).*
 - 5.25 *Where the legal line of a path is obstructed, the applicant will have to make a case in writing why the legal line of a path cannot be made open and available for public use. The Case Officer and Rights of Way Team Leader may, if satisfied by the reasons given, waive the*

⁶ The power of the Rights of Way Team Leader to authorise the taking of enforcement action is a power delegated down to him under Sections 3.1.2 of Annex H3 (*Scheme of delegation by the Council and by the Executive to Directors and other Officers*) of Central Bedfordshire Council's Constitution.

requirement to have an open path where they deem it appropriate, having regard to all the circumstance of the particular case.

Requirements for obstructed paths to be extinguished under Section 118 of the Highways Act 1980

3.6 The requirements relating to a Public Path Extinguishment Order application affecting an obstructed path are as stated in the Council's **Applications Policy**. Namely:

5.26 *Where an application seeks to extinguish a path the Rights of Way Team Leader may require that the path be monitored for a period of time to assess whether it is used by the public and to what extent. Where the application relates to a route that has been unavailable for public use because of obstructions that cannot be removed, the Rights of Way Team Leader may require that a suitable alternative route be provided so that a comparable level of use may be ascertained.*

5.27 *A suitable alternative route means one on an existing right of way or permissive path of equal or higher status, or on land in the same ownership as the application path along a route that does not impede the passage of the public entitled to use the application path, and which is substantially as convenient for members of the public to use. Where an alternative route is proposed on land in a different ownership the applicant would have to compensate the affected landowner.*

5.28 *The duration of the assessment period will be determined by the Case Officer on a case-by-case basis and will generally be between one month and one year. The applicant will be required to pay any reasonable costs expended by the Council in ascertaining the level of use of the route. The Case Officer has discretion to waive these requirements if a suitable alternative right of way of equal or higher status exists nearby.*

Requirements for obstructed paths to be deleted under Section 53 of the Wildlife and Countryside Act 1981

3.7 The requirements relating to a Definitive Map Modification Order application affecting an obstructed path are as stated in the Council's **Applications Policy**. Namely:

8.9 *Where an application to delete a path relates to a route that has been unavailable for public use because of permanent or long-lived obstructions, the applicant will enter into a permissive path agreement to provide a suitable alternative route whilst the Definitive Map Modification Order application is being determined⁷. The alternative*

⁷ Until a Definitive Map Modification Order is confirmed the map is conclusive legal evidence of the existence of a right of way shown upon it.

route should keep as close to the definitive line of the path where possible and should conform to all the requirements of a public right of way.

8.10 The applicant must make every effort to remove any temporary obstructions preventing use of the legal line of the path. The Case Officer may, however, waive this requirement where he or she deems it appropriate having regard to all the circumstance of the particular case.

3.8 Section 4 below details the Council's approach in relation to obstructions arising from a recently confirmed Definitive Map Modification Order.

Applications received in response to commencement of Enforcement Proceedings

3.9 Where an application to divert, extinguish, or delete a path is received after enforcement proceedings have begun, the Rights of Way Team Leader has discretion⁸ as to whether to continue with the enforcement process or to allow the application to be processed on the condition that a suitable alternative route is provided.

Failure of an application

3.10 Where an application to either divert, extinguish, or delete an obstructed right of way is refused by the Council, or is not confirmed by the Council or Secretary of State for the Environment, Food and Rural Affairs, the Council will either take enforcement action to open up the legal line of the path and seek to recover any costs associated with doing so; or will make a Council-generated order⁹ to resolve the issue. A Council-generated order will seek to provide a route of the Council's own choosing that it considers to be the most acceptable to the users of the right of way.

⁸ In deciding whether to take enforcement action, the Rights of Way Team Leader should have regard to *R. v Lancashire County Council ex parte Guyer (1980)* which removed the duty under S.130 to assert the public's rights where a route was in serious dispute.

⁹ Whilst the applicant cannot be charged for such an order under the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (as amended), they will be expected to agree not to claim compensation for any order so made.

4. Obstructed paths resulting from a recent Definitive Map Modification Order

4.1 Where a public right of way has been altered or added to the Definitive Map by the recent confirmation of a Definitive Map Modification Order and the new line of the path is obstructed, the Council will consider the following factors before acting:

- The nature of the obstruction (permanent, long-lived or temporary);
- The current or likely future use of the land affected by the path;
- The surrounding public right of way network;
- Representations from local Ward Members, local Parish Council, user-groups and affected landowners;
- The reason behind the Modification Order.

4.2 Where a Definitive Map Modification Order results in the amended line of the path being obstructed by a pre-existing structure, the initial position of the Council will be that the amended definitive line of the path should be opened up along its new line and any temporary obstruction removed.

4.3 In cases where the obstruction could reasonably or practicably be removed by means of enforcement action **and** the circumstances are such that a suitable alternative route could be provided within the legislative tests of the Highways Act 1980, the landowner/occupier should be invited to apply for a concurrent Public Path Diversion Order at their expense.

4.4 In cases where the obstruction could reasonably or practicably be removed by means of enforcement action, **and** the circumstances are such that there is no reasonable alternative route, the landowner/occupier should be invited to apply for a concurrent Public Path Extinguishment Order at their expense.

4.5 Where a concurrent application for either a Public Path Diversion Order or Public Path Extinguishment Order has been made, the Council will not unreasonably refuse to make such an order.

4.6 Where a concurrent application to either divert or extinguish an obstructed right of way is refused by the Council, or an Order is not confirmed by the Council or Secretary of State for the Environment, Food and Rural Affairs, the Council will consider whether action should be taken to either open up the legal line of the path, or to make a Council-generated order to resolve the issue as below.

Council-generated orders

- 4.7 The exception to the above points is where the Modification Order was made to correct an acknowledged error by this or another local authority - in which case any concurrent Order will be Council-generated.
- 4.8 Where an obstruction is considered to be either permanent or long-lived and consequently the obstruction could **not** be reasonably or practicably removed by means of enforcement action, the Council will consider either making a concurrent Council-generated Public Path Diversion Order or Public Path Extinguishment Order to resolve the issue.
- 4.9 A Council-generated order will seek to provide a route of the Council's own choosing that it considers to be the most acceptable to the users of the right of way. Any structures required to facilitate passage by the public will be of the Council's choosing, and widths will comply with the Council's **Applications Policy**. Any significant deviation from the preferred route would have to be achieved by means of an application by the affected landowner or tenant. Similarly, any structures for stock control would have to be applied for and paid for by the affected landowner or tenant.
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Sections 5 and 6 should be read in conjunction with the Council's **Ploughing and Cropping Policy**.

5. Paths obstructed by ploughing and similar activities

- 5.1 Section 134 of the Highways Act 1980 permits a farmer, under good husbandry, to plough or disturb the surface of a cross-field highway for the purposes of agriculture but only if it is not *reasonably convenient* for him not to plough or otherwise disturb the path.
- 5.2 Headland paths and byways open to all traffic (“BOATs”) are excluded from Section 134 and therefore it is an offence to disturb the surface of any headland path or BOAT. When the surface of such is disturbed, the Council will serve written notice on the farmer requiring restoration of the full width to a compacted and level state within seven days. A contractor should be instructed to be on standby to take action on a date as soon after the 7th day as is practicable.
- 5.3 Any cross-field path ploughed or disturbed **must** have its surface restored within fourteen days of being first ploughed or disturbed and within 24 hours for any successive instance. The farmer **must** ensure the disturbed surface of the cross-field path is restored to its recorded width or, where there is no recorded width, to no less than its minimum width¹⁰ to make it reasonably convenient for the public to exercise their right to use the route. The farmer **must** also mark the line and width¹¹ of the path which has been disturbed. Where the farmer is unsure as to the width to be reinstated, or the best method to do so, they can contact the Countryside Access Team for advice.

Status	Minimum width enforceable where unrecorded ¹²		Maximum enforceable width where unrecorded ¹¹		
	FP	BW	FP	BW	BOAT
Field edge path	1.5 m	3.0 m (includes BOATs)	1.8 m	3.0 m	5.0 m
Cross-field path	1.0 m	2.0 m	1.8 m	3.0 m	5.0 m

¹⁰ As specified in Schedule 12A of the Highways Act 1980 (as amended by the Rights of Way Act 1990).

¹¹ Examples of how this can be done are contained within the Council's **Ploughing and Cropping Policy**.

¹² Where the width of the public right of way is recorded in the Definitive Statement or in a Parliamentary Inclosure Award this is the width to be reinstated.



open for access

- 5.4 Where a cross-field path has not been reinstated to the required width within the required period after being disturbed verbal notice of this requirement will be given to the farmer indicating that restoration must take place within 7 days and confirmed by letter.
- 5.5 Where a path has not been reinstated after the seven day deadline, the farmer will be served notice under Schedule 12A of the Highways Act 1980 requiring him to reinstate the path to the required width within a further 7 days. A contractor should be instructed to be on standby to take action on a date as soon after the 7th day as is practicable.
- 5.6 Actions by the Area Officer should follow the procedures described in the Council's ***Ploughing and Cropping Policy***.
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6. Paths obstructed by crops

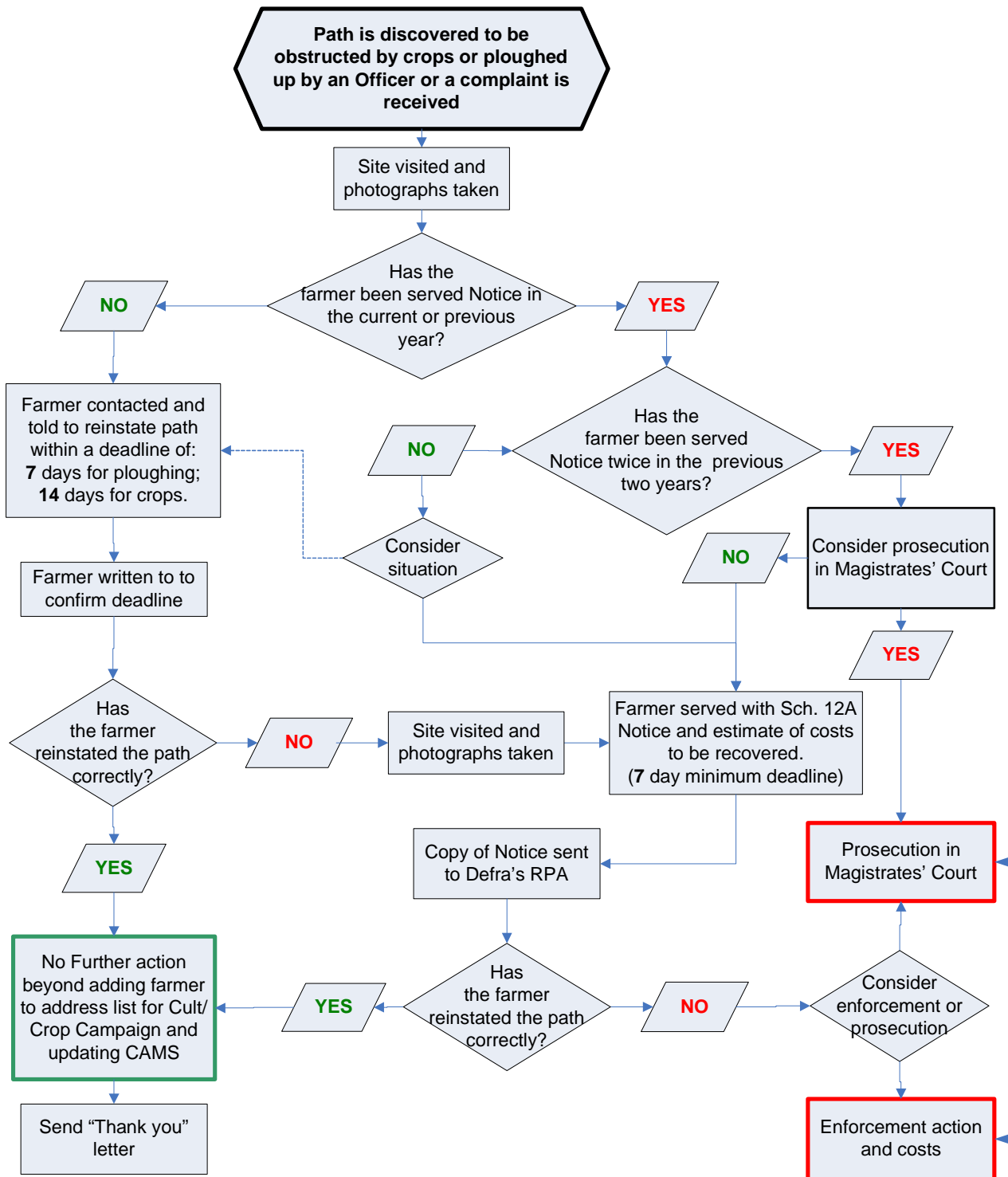
- 6.1 Under Section 137A of the Highways Act 1980 farmers have the duty to ensure that any crop (other than grass for grazing/silage) is removed from the line and full width¹³ of a public right of way.
- 6.2 The Area Rights of Way Officer will investigate any reported crop obstructions within 5 working days of the complaint being lodged. The Council considers that any crop with a height of 6 inches (15 cm) or more constitutes an obstruction.
- 6.3 Where any crop is found to encroach on a path the farmer will be given a verbal and/or written notice to remove the obstruction within 14 days. Where the farmer is unsure as to the width to be reinstated, or the best method to do so, they can contact the Countryside Access Team for advice.
- 6.4 If a verbal or written request is not complied with within the fourteen day period¹⁴, written notice under Schedule 12A of the Highways Act 1980 will be given requiring the obstruction to be removed within a further 7 days and estimating the costs that the Council will be charging the farmer for taking the required enforcement action. A contractor should be instructed to be on standby to take action on a date as soon after the 7th day as is practicable.

Persistent offenders

- 6.5 Where a farmer is served written notice for ploughing or crop obstructions, any new infringement on any path they farm in the following year should be dealt with by serving a written Schedule 12A notice with a 7 day deadline along with an estimate of the costs that the Council will be charging the farmer for taking enforcement action. A contractor should be instructed to be on standby to take action on a date as soon after the 7th day as is practicable.
- 6.6 A copy of the notice will also be sent to the Rural Payments Agency at the Department of Environment, Food and Rural Affairs where it breaches Cross-Compliance requirements.
- 6.7 Where a farmer is served written notice for crop obstructions in two consecutive years, any further infringement in the third year should be considered being dealt with by means of a prosecution. [perhaps a line or two on what that would involve]. Again inform the RPA.
- 6.8 Actions by the Area Officer should follow the procedures described in the Council's ***Ploughing and Cropping Policy***.

¹³ As specified in the Rights of Way Act 1990 or width recorded in the Definitive Statement.

¹⁴ An extension of 7 days may be given where a genuine and acceptable reason has been given for not reinstating a path by the required deadline.



7. Paths obstructed by vegetation other than crops

- 7.1 Paths obstructed by encroaching or overhanging vegetation other than crops - such as trees, bushes etc. - will be dealt with under Section 154 of the Highways Act 1980 and, where applicable, under the Trees section of the Council's **Maintenance Policy for Public Rights of Way**.
- 7.2 Where any vegetation is found to overhang or encroach on a path the landowner and/or tenant if applicable will either be given a verbal and/or written notice to remove the obstruction within 14 days, or will be served directly with a formal notice under Section 154 for the obstruction to be removed within 14 days along with an estimate of the costs that the Council will be charging the landowner for taking enforcement action. A contractor should be instructed to be on standby to take action on a date as soon after the 14th day as is practicable.
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8. Paths obstructed by material, things deposited on the highway, or structures placed across the highway

Material and Deposits

- 8.1. Paths obstructed by material - including cut vegetation and rubbish, etc - will be dealt with under Section 149 of the Highways Act 1980. The Council will immediately serve written notice on the person who deposited the material requiring them to remove it within a 7 day deadline.
- 8.2. If the material is not removed by the end of the 7th day the Council will make an application to the Magistrates' Court for an order to remove the material and recover all costs associated with taking enforcement action
- 8.3. Where the Council has reasonable grounds to consider that anything deposited on the highway constitutes a danger (including a danger to users or other members of the public) and ought to be removed without the delay of giving notice, it will take action remove the thing as soon as possible and will charge the appropriate person for taking enforcement action and safely disposing of the material.

Unauthorised Structures

- 8.4. Any unauthorised structures placed on a public right of way will be dealt with as below, or under Sections 2, 3, or 4 of this policy, or the Council's **Structures Policy: Achieving Least Restrictive Access on Central Bedfordshire's Rights of Way**, depending on the circumstances.
- 8.5. Where an unauthorised structure or object has been erected and obstructs a public right of way maintainable at the public expense, the Council may take steps under common law to remove the obstruction as quickly as possible. Where removal costs could be recovered, the Council may, under Section 143 of the 1980 Act, serve notice upon the person or organisation responsible for the structure giving them 7 days notice to remove the structure.
- 8.6. Where the structure or object has not been removed by the deadline set within the notice, the Council will, under Section 143 of the 1980 Act, remove the obstruction. The Council must allow at least one month from the date of service of the notice before exercising its power to remove the obstruction and may recover any expenses incurred in removing the structure of object from its owner.
- 8.7. Where a person wilfully obstructs a public right of way without lawful authority or excuse and does not remove the obstruction within any notice period served upon them by the Council, the Council will seek to prosecute that person at the Magistrates' Court under Section 137 of the 1980 Act. Section 137ZA of the Act empowers the Council to remove the obstruction and recover any expenses incurred in doing so.