

SURREY COUNTY COUNCIL**LOCAL COMMITTEE (TANDRIDGE)****DATE:** 21 June 2019**SUBJECT:** Member Question: Issue of public concern involving obstruction of the highway in Caterham**DIVISION:** Caterham Valley

Councillor Michael Cooper (Harestone ward) asks:

There is a current and ongoing issue in Caterham, raising serious concerns locally about how local authorities support people who are homeless and refuse help, and what powers the highway authority has to remove obstructions from the public pavement.

Over the past month or so central Caterham has been blighted by a collection of bins, the number seemingly growing each week. Currently the line of bins has been situated outside the St John's Church Hall, opposite St Johns Church, in Clareville Road, Caterham. The vast collection of bins is blocking the pavement and causing a public nuisance. There are further concerns of anti-social behaviour, public safety and public health that have been reported to the Police.

The Area Highways Manager at SCC is fully aware of the situation but no progress has apparently been made in resolving it. I am requesting a full report on what has been done and when this appalling situation is going to be resolved.

Response:

There are a collection of wheeled bins and some boxes, which contain the belongings of a known person, at the back of the pavement on Clareville Road, Caterham. These are on the wider pavement outside the St John's Church Hall, opposite St John's Church. This was first registered with Surrey County Council, as an enquiry, on the 4th June 2019. Since then this has been investigated, and there has been liaison with Tandridge District Council about the wider issues for this situation.

Obstruction of the highway is defined under Section 137 of the Highways Act 1980: "if a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence". There is additional case law on this issue and about what constitutes a highway obstruction. Some of these cases also consider whether there has been an unlawful use of the highway, even if there is not considered to be an obstruction. Recent cases have also indicated that social issues are to be resolved firstly, and that highway law is not to be used by Local Authorities to try to address social issues. Tandridge District Council are leading on the social issues.

The Highways Act contains provisions enabling the Highway Authority to deal with various encroachments, obstructions and unlawful interferences. Each provision prescribes action which the Highway Authority may take where that provision applies.

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Common Law also exists to enable the Highway Authority to remove obstructions and abate nuisances, and these are maintained under Section 333 of The Highways Act.

Surrey County Council (SCC) are able to take proper proceedings in the exercise of this duty, and are afforded the discretion to take such steps as they deem expedient.

The approach taken by SCC, when exercising this discretion, is to consider if enforcement is in the public interest, if there is a greater than 50% chance of conviction, and if the evidence would stand up to scrutiny in court.

Any enforcement action will be proportionate to the interference and/or risk to the use of the Highway. The bins are to the back of the pavement and have been inspected for highway safety issues. It is considered that there is adequate space for pedestrians to gain access past the bins, at this time. This will continue to be monitored, until the wider issues are resolved.

SCC will consider all of its statutory powers in any combination. The action SCC will take may range from providing advice and guidance; issuing a formal letter; serving Notices; carrying out of default action; recovery of costs for carrying out default works from the owner/occupier; or prosecution. We believe that education and liaison are preferred to formal action and that our role therefore involves actively working to advise and assist with compliance.

Serving Notices, or carrying out default works, are currently considered disproportionate and unlikely to be successful, without the wider social issues being addressed.

This is a complex issue, and even if Notices were served for these items to be removed, they are likely to be moved to another nearby location in the area. The Area Highways team are coordinating with Tandridge District Council on the highway issue, for when the wider social issues are addressed.

Contact Officer: Zena Curry, Area Highway Manager