

# APPROVAL OF STRUCTURES FOR AGRICULTURE - good practice

## Section 147 of the Highways Act 1980

### Power to authorise erection of stiles, etc on footpath or bridleway

The act says that *where the owner, lessee or occupier of agricultural land makes a submission to a competent authority, as respects a footpath or bridleway that crosses the land, that in order to ensure that the use of the land shall be efficiently carried on for agriculture (including forestry or the keeping or breeding of horses) it is expedient that stiles, gates or other works for preventing the ingress or egress of animals should be erected on the path or way.... then the authority to whom the submission is made may authorise the erection of the stiles, gates or other works, with the authorisation subject to such conditions as they may impose for maintenance and for enabling the right of way to be exercised without undue inconvenience to the public.* It then says that after an authorisation is made the public right of way is to be deemed to be subject to a condition that the stiles, gates or works may be erected and maintained in accordance with the authorisation so long as the conditions attached to it are complied with.

So:

- # The landholder must apply to the Authority (normally the Highway Authority).
- # The Authority must check the landholder's status as owner, lessee or occupier.
- # The Authority must check that the land is in use or to be used for agriculture.
- # The Authority must check that the structures are expedient to that agricultural use.
- # The Authority then may approve any structure they see as appropriate, though they are not obliged to do so. And they can make approval subject to any conditions as to ongoing maintenance and also subject to any other conditions enabling the right of way to be not unduly inconvenient.

What conditions may be considered reasonable?

Conditions help the Highway Authority square the permitting of structures hindering public use with their duty at all times to assert and protect the public's free use of the paths (HA80 S130). So failure to apply conditions could be seen as a dereliction of that duty. Clearly the structure has to be defined to some sort of standard, just 'structure' would not do. Highway Authorities may have their own favourite design specifications and those could well be specified, but they are unlikely to be as tightly specified and field-measurably tolerated or as embracingly specified as BS5709, the British Standard for Gaps, Gates & Stiles. So it would usually be both simpler and more efficient simply to make BS5709 compliance a condition. The breach of any condition makes the structure unlawful, it becomes an obstruction of the way, an offence which can be dealt with by removal, even prosecution.

It would be reasonable to expect that in all cases the structure is conditional on the continuation of the agricultural need for a structure. In principle BS5709 would embrace that automatically, but it is unreasonable to expect everyone to understand that and the permission should have such a condition explicitly applied. Some have said that such a condition is not spelled out in the statute and therefore not permissible, but *conditions ...for enabling the right of way to be exercised without undue inconvenience to the public* can surely have a time dimension such as tying open of a gate when stock are not present for some specified period. Complete removal if the land is no longer in agricultural use would seem merely an extension of that. Some have said that such a condition is actually already implicit in the approval process. Making it explicit is probably the surest course.

As to conditions ensuring the way is not unduly inconvenient to the public, note that it says 'the right of way' not 'the structure'. Right of way could refer to simply the right, or in line with statutes since early in the 19th century, to all or some of the physical path. Either way not only can the term *undue inconvenience* reasonably cover such matters as maintaining the surface near the structure free of water and mud (covered by BS5709 anyway) but can be read to include compensating improvements further along the right of way/path, say a stile to kissing gate conversion. Thus the overall inconvenience is not made undue. The Authority has to be conscious of its HA80 S130 duties and if it feels overall there is likely to be undue inconvenience it should simply refuse the main request. There is no appeal, the landholder would have to demonstrate a very high degree of unreasonableness by the Authority in a judicial review court case in order to overrule such a decision.