

## **Tunbridge Wells Commons Conservators: Encroachment Policy**

### **Policy for managing encroachments and other unauthorised works and activities**

The Commons are maintained and preserved by the Conservators according to the provisions of the County of Kent Act 1981 for the enjoyment of townspeople and visitors. To fulfil their responsibilities the Conservators have powers to carry out certain works for maintenance and improvement of the Commons and also to make bye-laws. It is unlawful to erect structures, lay roads or paths or make any enclosures on the Common without the Conservators' permission. Other activities are prohibited by the bye-laws or by legislation applying to Town and Village Greens.

Over the past few years, Conservators have had to deal with a wide variety of actual or prospective encroachment issues, including:

- Unauthorised parking by local residents, commuters and commercial vehicles;
- Re-surfacing, widening of access ways without consent;
- Storage of building materials;
- Waste dumping;
- Extension of curtilage of properties abutting the Commons, including inappropriate planting and enclosure;
- Erosion of verges;
- Erection of signage;
- Proposals to build new roads, driveways, and car parking areas.

The Conservators have developed and published policies for advertisements and the staging of events on the Commons, and put standard procedures in place for dealing with unauthorised camping. Other nuisances and encroachments, whether large or small, have hitherto been dealt with on a case-by-case basis.

The Conservators have now adopted a standard policy towards various types of encroachment, grounded in a firm understanding of the legal position – see pages 2 & 3 - and supported by the bye-laws. The Policy encompasses the following elements, which are set out in Annexes 1a and b (pages 3 & 4):

- Categorisation of encroachments according to levels at which they must be addressed.**
- Agreed process for any escalation of issues.**

### **The implementation procedures of this Policy are based upon:**

- Standard procedures, support documentation and delegated authority for handling routine encroachment issues, with periodic reviews of their efficacy.
- Reference to the Conservators or their committee, where action against a serious encroachment is necessary.
- Systematic but simple record-keeping of encroachments and other nuisances.
- A commitment by the Conservators to work in partnership with other bodies that have responsibilities and powers relating to the Commons. This applies particularly to the issues raised in this Policy because working with such bodies may often be the most effective solution. For example, the Manor and the Freehold Tenants have powers under the Rusthall Manor Acts, the Manor has powers under its position as a freeholder, the Borough Council has controls over development as Local Planning Authority, the Police have powers (including the bye-laws) to control crime and anti-social behaviour, the Community Safety Partnership and the Safer Town Forum co-ordinate action to prevent crime and anti-social behaviour, and action against encroachments can be pursued both by interest groups and individuals, under the Inclosure Act 1857 and the Commons Act 1876.
- Clear policy statements, backed up by simple-to-understand guidelines with reference to the bye-laws where appropriate..
- Communication with interested parties including property-holders abutting the Commons.

### **Benefits of the Policy**

This Policy will have clear benefits for the Commons and the people of Tunbridge Wells. Apart from being demonstrable best practice, it would:

- Reduce the burden on the Conservators' and Officers' time, allowing them to focus on the most important issues.
- Reduce the likelihood of inconsistent approaches or "re-inventing the wheel" over time, and minimise the risk of bias or failure to adhere to all relevant legislative and other requirements.
- Facilitate response to recurrent or cumulative issues.
- Facilitate understanding of costs and benefits of alternative approaches to managing issues.
- Reduce the risk of inadvertent breaches of policy, and act as a deterrent against conscious breaches.
- Facilitate enforcement where necessary

## Statutes protecting the Commons from damage or encroachment

The primary legislation affecting our Commons and source of the Conservators' powers and duties is Part XV of the County of Kent Act 1981:

Section 108 imposes a duty on the Conservators to "maintain and preserve the Commons" . It confers powers on them to carry out works of drainage and improvement, planting and protecting trees and maintaining footpaths and providing seats for the public on the Commons.

Section 109 gives the inhabitants of Tunbridge Wells free access to the Commons and the right to enjoy recreation and play games. To enable this to happen the Conservators may set aside areas for organised games, enclose them with posts and chains and open fences and prescribe who may use such areas.

Section 110 imposes a duty to maintain the Commons free from "all encroachments except as herein provided". The exceptions listed in this section are<sup>1</sup>:

- gas, water and sewage works by the utility companies;
- *roads and footpaths on those parts of the periphery of the Commons delineated in red on the official plan of the Commons, over which; in separate legislation Highways can exercise rights:*
- power for the Conservators to permit temporary enclosures to be made and tents or booths to be erected on such occasions as they shall think fit.

Subsection (2) of Section 110 makes it unlawful for "any persons other than the Conservators without the consent of the Conservators in writing to make any temporary or other enclosure of any part of the Commons or to put any tents, removable lodges, fences, posts, rails or other matters or things thereon."

Section 111 confers powers on the Conservators to make bye-laws against encroachments and other nuisances and

Section 112 allows them to appoint officers to secure observance of the law and the bye-laws.

Beyond strict adherence to their duties and powers under the County of Kent Act, the Conservators should not lose sight of other applicable legislation<sup>2</sup> which may limit discretion.

- The Rusthall Manor Acts of 1739 and 1902 impose a requirement for consent from the Manor and the Freehold Tenants for any building or enclosure.<sup>3</sup>
- The Clerk advises that, as registered Town or Village Greens (TVG), the Commons are covered by the Inclosure Act 1857 and the Commons Act 1876 which make it a criminal offence to damage a TVG or encroach upon it. These offences can be prosecuted in the district court by – in our case - either TWBC or the Manor. Any inhabitant of the "parish" could also bring criminal or civil proceedings for public nuisance under the 1876 Act. The onus would be on the prosecuting authority to establish detriment to the TVG or to its enjoyment by local inhabitants.<sup>4</sup>

A question has arisen over the status of encroachments which have occurred well in the past; the Clerk has advised that he did not believe a court would be sympathetic to action by the Conservators when they had taken no action for many years and would probably take the view that the length of time was clear evidence that no harm had been done to the Commons, provided the encroachment was in no way extended.

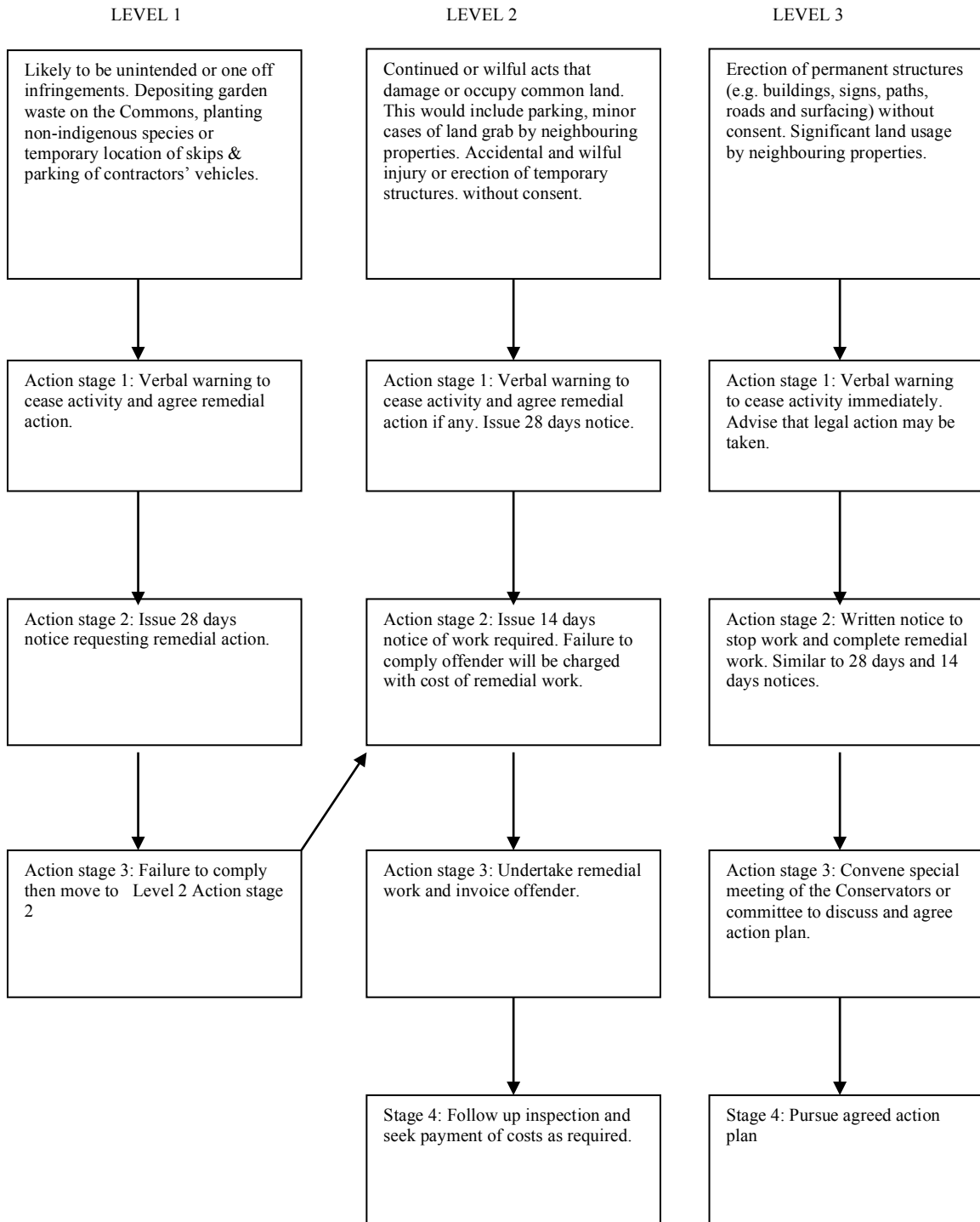
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<sup>1</sup> Section 114 explicitly excludes all highways across the Commons and the areas (buildings and curtilage) coloured brown on the official plan from the care of the Conservators.

<sup>2</sup> See Annex 2 to this Policy on the Conservators' website for full text of relevant sections of the Acts referred to here.

<sup>3</sup> Article 8 of the 1739 Rusthall Manor Act, confirmed in the 1902 Act, states "That no other Part of the Wastes of the said Manor of Rusthall shall at anytime here-after be inclosed or built upon, unless by the mutual Consent of the Lord of the said Manor for the Time being, and the greater Part in Number of the Freehold Tenants of the said Manor;

**Annex 1a: Proposed categorisation and action plans to resolve encroachments**



## **Annex 1b – Supplementary note on actions and categorisation of encroachments**

1.) The three levels of encroachment are explained below. They follow closely those successfully employed by Surrey County Council and cover the commonest occurrences.

### Level 1

- Occasional deposits of garden waste
- Planting of non-indigenous species
- Temporary location of building materials
- Depositing skips on the commons while work undertaken on neighbouring land
- Temporary parking
- Temporary signs for commercial or advertising purposes

### Level 2

- Continued parking on common land by owners of neighbouring properties
- Wilful damage – e.g. felling/removal of timber, turf or peat without written permission
- Erosion through persistent and intentional parking or driving over parts of the common
- Permanent occupation or cultivation of parts of the common including fencing or the planting of hedges
- Long term storage of building materials and skips

### Level 3

- Public utilities installing signs, shelters and other permanent fixtures or surfacing parts of the commons
- Any new permanent path, track or roadway
- Laying surfaces on paths, tracks or car parks other than with materials prescribed in relevant Acts
- Any permanent building or structure
- Any commercial development not covered in the above

Note1: At stage one, for each level, the Warden would aim to give verbal advice and warn of future action if the encroachment was not rectified within reasonable time scales. If the verbal advice failed to produce the desired result then the production and delivery of written notices from the Conservators would be invoked. No further face to face negotiations would be required and the rectification process would follow the subsequent stages shown in Annexe 1a. However the Warden would have the discretion to pursue continued dialogue if he felt that there was advantage and no risk in so doing.

Note 2: The governance surrounding the placing of skips on common land should be reviewed. Granting licenses to householders or the skip hire company is an option but often unlikely to be cost effective.

**Date of review: September 2020**

**Date of next review: September 2023**