

Public Rights of Way Investigations	8th January 2019
To: The Leisure and Development Committee FOR INFORMATION	

Linkage to Council Strategy (2015-19)	
Strategic Theme	Protecting and Enhancing our Environments and Assets Promote our tourism offer locally and internationally Prosperity, Health and Wellbeing and Cohesive Community
Outcome	Improved access to our natural environment. Development of visitor economy and health and well- being opportunities.
Lead Officer	Head of Tourism & Recreation
Cost: (If applicable)	N/A

The purpose of this report is to provide Members with an understanding of the definition of a public right of way, the investigation/assertion process and the duties and powers placed upon Council with respect to the Access to the Countryside (NI) Order 1983.

Public rights of way are public highways that are legally protected in the same way as roads. In addition a public right of way:

- Is a highway which any member of the public may use as a right, not a privilege granted by the landowner.
- May be created specifically or through 'deemed dedication' (by the public openly using a path for a period of time, in some circumstances, for as little as a few years) with the knowledge of the landowner.
- May be limited to certain users, for example walkers only, or walkers and horse riders.
- Is a permanent legal entity and remains in existence unless and until the path is extinguished or diverted by due legal process.
- Must be respected by the occupier and landowner who should do nothing to obstruct the right of way, or prevent or intimidate anyone from exercising their rights of passage.

The maxim is: once a highway, always a highway. A public right of way does not include a road or any other way which is maintained by a government department.

Types of public rights of way

There are three types of public rights of way. The routes may be marked with signposts.

- Footpath – open to walkers only.
- Bridleway – open to walkers and horse riders.
- Carriageway – open to walkers, cyclists, horse riders, horse-drawn vehicles and motor vehicles.

Who is responsible for public rights of way?

Each council has a specific duty to assert, protect and keep open any public right of way and to make and preserve maps and other records of the rights of way in its area. The Council must enforce the public's common law rights of passage and investigate and record where those rights exist.

The duty to assert public rights of way is one of the Council's most important duties. It is the basis on which the Council can set up, and make known to farmers and landowners and the public, what public rights of way exist, where they run and how they can be used legally.

In addition, the Council will often need to assert a path as a public right of way before it can take action to protect the path, or to allow the route to be signposted, improved and promoted. This is necessary both to decide the precise line and status of the path, and to make sure that the council is acting correctly and within the powers that are available to it.

Under the Access to the Countryside (NI) Order 1983 Councils have a duty to:

- Assert, protect and keep open and free from obstruction any public right of way.
- Make and preserve maps of the rights of way in its area.
- Signpost paths, where necessary, to help anyone who does not know the area.
- Contribute at least a quarter of the cost of maintaining stiles and gates.

Councils have a right to:

- Maintain any public right of way.
- Set up new rights of way by agreement.
- Make orders to divert, extinguish or create paths, and confirm unopposed orders.
- Make and confirm orders temporarily to divert or close any public right of way.
- Allow the erection of new stiles and gates.
- Take legal proceedings.
- In some circumstances, act in default of the landowner and recover its costs.

At present Council is following the assertion/investigation process as advised in guidance issued by Northern Ireland Environment Agency. This process is summarised in the attached flow chart, **Annex A**, setting out the various stages of consultation, evidence gathering, negotiation and consideration required in this complex legal procedure.

Officers are preparing a Draft Policy on the Status Investigation of Public Rights of Way which will be brought before members for consideration and approval in due course. This policy will set the direction for Council's approach for dealing with what can be complex and often controversial issues regarding public rights of way.

At present there are currently fourteen public rights of way cases being considered by Council.

Figure 3: PROCESS OF ASSERTION

