

PUBLIC RIGHTS OF WAY

A Guide to the Status Investigation Procedure



1. WHO APPROVED THE PROCEDURE?

This public right of way status investigation procedure was researched and compiled over a period of months by Lesley Duff, Countryside Recreation Officer with Antrim Borough Council. The procedure was subsequently approved and published in consultation with Environment & Heritage Service.

2. WHY HAVE A PROCEDURE?

Under the Access to the Countryside (NI) Order 1983 local Councils have a duty to “assert, protect and keep open” public rights of way. However, before a Council can decide whether to assert a route, it must first be satisfied, through a process of investigation, that the route is indeed a public right of way. This process can often be complex, controversial, lengthy and legalistic.

There will always be differences in the way that individual Councils carry out their duties. These differences reflect such diverse matters as location, different policies and priorities and staffing levels. However, the following information is intended to help broadly outline and clarify the process that local Councils follow in response to a public right of way issue or status query brought by a member of the public.

3. WHAT IS A PUBLIC RIGHT OF WAY?

A public right of way:

- Is a highway which any members of the public use as of right; not a privilege granted by the landowner.
- May be created specifically or by 'deemed' dedication i.e. by the public openly using a route for a period of time with the knowledge of the landowner.
- May be limited to certain types of user e.g. walkers only, horse riders etc.
- Is a permanent legal feature and remains in existence unless and until the route is extinguished or diverted by due legal process.
- Must be respected by the landowner.
- Is not a road maintainable by Roads Service.



Lesley Duff of Antrim Borough Council and
Terry Eakin of Environment and Heritage Service

4. BASIC CRITERIA THAT INDICATE THE EXISTENCE OF A PUBLIC RIGHT OF WAY

There are a number of pieces of evidence that may help to substantiate the existence of a public right of way. The following are the most relevant.

- The route has been used 'as of right' by the general public. Use of the route by expressed or implied permission of the owner e.g. employees, social visitors or tradespersons does not create a public right of way.
- The public's use of the route was open, so that the landowner knew or should have reasonably known about it and did nothing to stop it.
- Use continued, without interruption, for a sufficient period to imply that the landowner intended to dedicate it as a public right of way.
- The route connects two public places or places to which the public regularly and legitimately resort e.g. public roads, other public rights of way, a church, the seashore etc.



5. THE PROCEDURE EXPLAINED

This section explains the procedure that is followed when a query as to the status of a public right of way is brought to the attention of a local Council.

- a. The relevant Council officer will take details and identify the route on a map with the person bringing the query. The route will be surveyed by the officer as much as is possible on the ground and he/she will make a preliminary report.
- b. If the route appears to meet the criteria as laid out in Section 4, and there is sufficient evidence to support this, the enquirer will complete an Investigation Initiation Application Form.
- c. Potential witnesses to support the claim will be identified and invited to complete Investigation Evidence Forms.
- d. The Council officer will identify and contact all relevant landowners, request a site visit and invite them to complete Landowner Evidence Forms.
- e. Any counter evidence will be collected from those believing the route not to be a public right of way.
- f. Documentation that either supports or repudiates the public right of way claim will be identified and collated.
- g. Council officers will assess the weight of all evidence and may seek legal advice.
- h. A recommendation will be made to Council based on the balance of evidence.

N.B. 5c-5f will run consecutively and those initiating the investigation may be invited to assist

6. MAIN OUTCOMES

There are three basic main outcomes from the investigation, although each will be specific to the particular situation:

1. The evidence may show that a public right of way exists. If all relevant landowners agree, an assertion will be made through a resolution of Council. All interested parties will be informed and the route will be recorded as a public right of way. If all landowners do not agree, Council may still pass a resolution to assert the route as a public right of way and may ask the Court to vindicate the decision.
2. The evidence may show that the route is not a public right of way. Council will therefore not assert it as such.
3. The evidence may be inconclusive. In this case Council may defer the matter until more evidence becomes available to enable a decision to be made.



7. POINTS TO NOTE

- Councils do not deal with extinguishments of Rights Of Way under the Housing Order 1981. In such cases contact the Northern Ireland Housing Executive.
- Councils do not deal with private rights of way between neighbours. In such cases contact a solicitor.
- In carrying out its duty towards public rights of way under the Access to the Countryside (NI) Order 1983, Councils are not concerned with issues such as the suitability or desirability of the route in question. Council decisions will therefore be based only upon available evidence at the time and, if appropriate, legal advice.
- If you are unhappy about the way in which your query as to the status of a route has been dealt with, please contact the relevant Council offices for details of their Complaints Procedure.



For further information and advice on the contents
of this leaflet or any other aspect of public rights of way:
please contact your local Council office.



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